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CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Third Report of Canada

covering the period
April 1, 1992 to April 1, 1996

Canada

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FOREWORD

The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was adopted by the United Nations General Assembly on December 10, 1984. With the support of provincial and territorial governments, the Government of Canada signed the Convention on August 23, 1985 and ratified it on June 24, 1987.

States Parties are required to report to the (UN) Committee against Torture on measures they have taken to give effect to the Convention. Canada's first report was submitted on January 16, 1989 and was reviewed by the Committee on November 17, 1989, in the presence of a Canadian delegation. Canada's second report was submitted on September 11, 1992 and was subsequently reviewed by the Committee against Torture on April 20, 1993.

The present report generally covers the period of April 1, 1992 to April 1, 1996. It was prepared in close collaboration by the federal, provincial and territorial governments and describes measures and initiatives taken by these governments with respect to the Convention.

The report is published in Canada as part of the ongoing program of the Citizens' Participation Directorate of the Department of Canadian Heritage to increase awareness of human rights issues. Copies of the report, in both official languages, may be obtained free of charge from the Citizens' Participation Directorate in Hull, or any regional office of the Department throughout Canada. This report is also available on the Human Rights Program website at: www.pch.gc.ca/ddp-hrd/.

Human Rights Program
Citizens' Participation Directorate
Department of Canadian Heritage
15-7-B
Hull QC K1A 0M5
Tel: 819-994-3458
Fax: 819-994-5252
Email: rights-droits@pch.gc.ca

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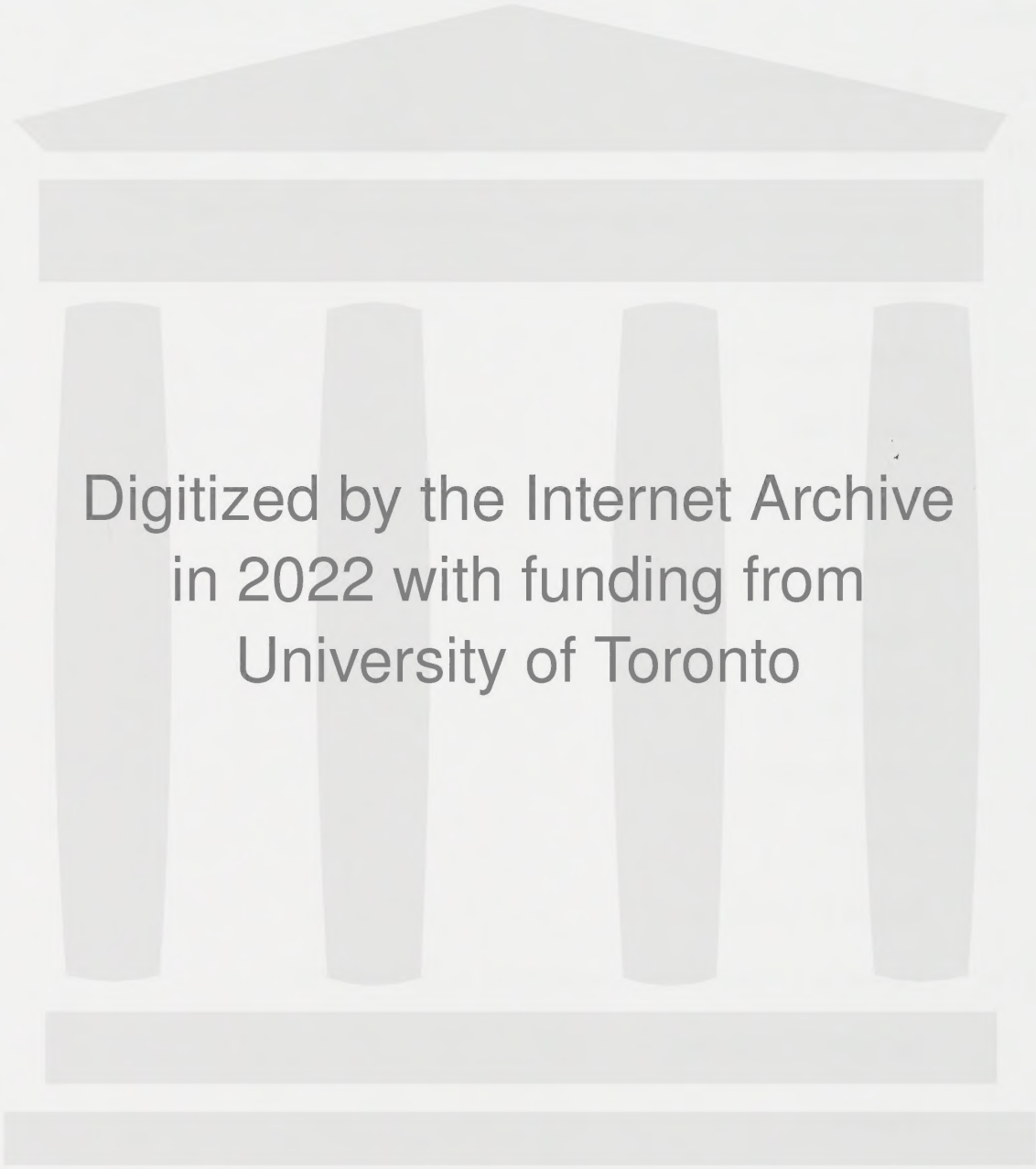

INTRODUCTION

1. On June 24, 1987, Canada ratified the United Nations *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention). This is Canada's Third Report under the Convention, covering the period from April 1, 1992 to April 1, 1996. Part One generally outlines Canada's constitutional structure as it relates to the Convention and parts Two, Three and Four update from the Second Report the measures undertaken at the federal, provincial and territorial levels to give effect to the provisions of the Convention.

PART ONE: GENERAL INFORMATION

The Constitutional Structure of Canada - General

2. Canada is a federal state made up of ten provinces and two territories. Pursuant to the *Constitution Act, 1867* and amendments thereto, legislative powers are divided according to subject matter between the federal government and the ten provincial governments. For example, Canada's Constitution gives each province jurisdiction within its territory over the administration of justice, property and civil rights, and hospitals. Examples of matters within federal jurisdiction are criminal laws and procedures, naturalization and aliens, and residual power for the peace, order and good government of Canada.

3. Canada also has two territories in which the federal government has jurisdiction to exercise both federal and provincial government powers. However, the federal Parliament has delegated to the territories many of the powers enjoyed by the provincial legislatures.

4. Due to this division of powers, federal, provincial and territorial governments are all involved in the implementation of the provisions of the Convention Against Torture. Because the role of security personnel is especially important for the purposes of this Convention, a detailed explanation follows on how the federal and provincial governments share responsibility in this area.

5. The Government of Canada has submitted a *Core Document Forming Parts of the Reports of State Parties*. The Core Document examines, in detail, Canada's constitutional structure, political framework, and general framework for the protection of human rights. The latter includes a discussion of constitutional and legislative protections for human rights, remedies available for redress of human rights violations, and the relationship between international human rights instruments and domestic law. This Third Report under the Convention should be read in conjunction with the Core Document.

General Legal Framework and Remedies Pertaining to the Elimination of Torture

6. An individual who alleges a violation of the Convention has recourse to a variety of remedies, including remedies under the *Canadian Charter of Rights and Freedoms* (the Charter). The Charter was incorporated into the Canadian Constitution on April 17, 1982, by virtue of the *Constitution Act, 1982*. It guarantees a variety of fundamental freedoms and legal rights, including the right of everyone not to be subjected to any cruel and unusual treatment or punishment (s. 12). Section 1 of the Charter provides that the rights and freedoms contained therein may be limited to the extent that law prescribes such a limit and that this limit is demonstrably justified in a free and democratic society. The Supreme Court of Canada has indicated that, in order for a limit on a Charter right to meet s. 1 requirements, the limit must serve a pressing and substantial objective and employ proportionate means to attain that objective.

7. Section 32 of the Charter guarantees the rights of private persons against action by the federal and provincial legislatures and governments. This section has been interpreted by the courts to apply to the full range of government activities, including administrative practices and the acts of the executive branch of government, as well as to edicts of Parliament or the legislatures.

8. In addition, Canadian law, particularly the *Criminal Code* and specific legislation and regulations governing the conduct of police, correctional service officers and army personnel, provides recourse to an individual who alleges a violation of the Convention.

International Law in Canada

9. In Canada, international treaty law is not automatically part of domestic law. Rather, the provisions of a treaty must be incorporated into domestic law either by enactment of a statute giving the treaty the force of law, or by amendment of the domestic law, where necessary, to make it consistent with the treaty. The implementation of a treaty whose provisions come under the jurisdiction of one, or both, levels of government, requires the intervention of the Canadian Parliament, the provincial legislatures and, often, the territorial legislative assemblies as well.

10. Under the Canadian constitution, the federal Parliament does not have the legislative power to give effect to all the obligations that Canada assumed when ratifying the Convention. Thus, prior to ratification, the federal and provincial governments engaged in extensive consultations which resulted in provincial governments undertaking to ensure compliance with those provisions of the Convention falling within their exclusive legislative authority.

11. Canada is also party to the *International Covenant on Civil and Political Rights* and the *Optional Protocol* to that Covenant, permitting individuals to bring communications to the UN Human Rights Committee alleging violations of the Covenant and, in particular, Article 7, the prohibition against torture and cruel, inhuman or degrading treatment or punishment. Since 1990, Canada is also a member of the Organization of American States. Individuals may bring

complaints before the Inter-American Commission on Human Rights, based on the *Declaration on the Rights and Duties of Man*, including Article 1, the right to life, liberty and security of the person.

Canada's Constitutional Structure as it relates to Security Personnel

12. This section explains the constitutional responsibility between the federal and provincial governments in Canada regarding security personnel.

The Royal Canadian Mounted Police

13. Responsibility for law enforcement in Canada is shared between the federal and provincial governments. The Royal Canadian Mounted Police (RCMP), established by the *Royal Canadian Mounted Police Act*, is a federal police force and is authorized to enforce federal laws anywhere in Canada. However, as a federal police force, the RCMP cannot enforce provincial or municipal laws unless clearly authorized to do so by provincial legislation. This is because the provinces are responsible for the enforcement of all laws of general application within their territorial limits. There is an overlap with respect to criminal law in that the federal government is responsible for enacting criminal law and procedure which applies throughout Canada as set forth in the *Criminal Code*. The enforcement of criminal law, the prosecution of criminal offences and the administration of justice within the province are generally matters under provincial responsibility.

14. Nevertheless, the two territories and all of the provinces, except Ontario and Quebec (which have established their own provincial police forces), have entered into contractual arrangements with the federal government whereby the RCMP acts as the provincial, and in some instances, municipal police force. In this role, the RCMP enforces provincial law, some municipal by-laws and the *Criminal Code*.

15. However, it is important to note that, as a matter of constitutional law, no provincial authority can intrude into the internal management of the RCMP. This remains the responsibility of the RCMP Commissioner, who is in turn responsible to the federal Solicitor General. This means that the disciplining of RCMP members, whether they are acting in a federal or provincial policing capacity, is an exclusively federal responsibility.

Correctional Services

16. The federal government, the ten provincial governments and the two territorial governments share responsibility for the adult correctional system such that Canada has, in effect, thirteen correctional systems. (Juvenile correctional services, although governed by the federal *Young Offenders Act*, are administered solely by the provinces and territories.)

17. Under the *Constitution Act, 1867*, the federal government is authorized to establish and administer penitentiaries housing persons sentenced to prison terms of two years or longer. On

the other hand, the provinces are responsible for the administration of correctional institutions housing persons sentenced to prison terms of less than two years.

18. The Correctional Service of Canada (CSC) is the agency responsible for administering federal sentences (i.e., two years or longer). This responsibility includes both the management of institutions of various security levels and the supervision of offenders under conditional release from the institution.

PART TWO: MEASURES ADOPTED BY THE GOVERNMENT OF CANADA

Article 2

General

19. Canada's First Report outlined a series of constitutional, legislative, regulatory and administrative measures directed at preventing torture. These included:

- the *Canadian Charter of Rights and Freedoms*, and, in particular, the right not to be subjected to any cruel and unusual treatment or punishment (s. 12), the right to life, liberty and security of the person (s. 7) and the right not to be arbitrarily detained or imprisoned (s. 9);

- section 269.1 of the *Criminal Code* which contains a specific offence of torture based on the definition in Article 1 of the Convention;

- other *Criminal Code* offences relating to the prohibition against torture and cruel, inhuman or degrading treatment or punishment such as assault, causing bodily harm with intent to wound a person or endanger life, murder, administering a noxious substance, extortion, and intimidation; and

- legislative, regulatory and administrative provisions governing the use of force by police and correctional agencies such as *RCMP Code of Conduct* offences, and the *Penitentiary Service Regulations*.

20. Canada's Second Report noted two further developments:

- the coming into force of section 7(3.71) of the *Criminal Code*, which makes war crimes and crimes against humanity a criminal offence; and

- Canada's ratification of the *Protocols Additional to the Geneva Conventions of 12 August 1949* on November 20, 1990.

21. Developments of note since the Second Report include a complete review of the Royal Canadian Mounted Police Operations Manual to eliminate any barriers to community policing initiatives. Moreover, the policy principles of policing by way of equality, integrity, and respect are being strengthened. RCMP policy on the treatment of prisoners, and interviews and interrogations will be coming under scrutiny incidental to this review. There will be no change, however, to the RCMP policy regarding conduct that could come within the meaning of torture as defined in the Convention.

Factors and Difficulties

(a) Events Relating to the Deployment of Canadian Forces in Somalia

22. In 1993, members of the Canadian Airborne Regiment were stationed at Belet Huen as part of the United Nations efforts in Somalia when a Somali male, Shidane Arone, was beaten to death after he was found and apprehended inside the Canadian compound The Canadian Forces, in particular the military police, assisted by a military medical officer (pathologist), a civilian forensic pathologist and a civilian police ballistics expert, investigated this incident, as well as the unrelated death of another Somali in March 1993.

23. As a result of these investigations, nine soldiers ranging in rank from private to lieutenant colonel were charged with a variety of offences and tried by general court martial. The general courts martial, composed of a jury of five officers advised by a military judge, took place at Canadian Forces Base Petawawa or in Ottawa, both in Ontario, Canada.

24. The first four courts martial, which began in November and December 1993, were aborted as the charges had been laid by the commanding officer while he was under investigation himself. The trials for the accused were recommenced pursuant to new charges ranging from murder and torture in the beating death of the Somali youth to unlawfully causing bodily harm and negligent performance of duty. The specific charges and the results of each of the courts martial are set out below.

25. Private Brown was charged with second degree murder and torture in relation to the 16 March 1993 death of Shidane Arone, the Somali male beaten to death inside the Canadian compound near Belet Huen, Somalia. The maximum punishment Private Brown faced was life imprisonment with a period of parole ineligibility of 10 to 25 years.

26. At his court martial in February and March 1994, Private Brown was convicted of manslaughter and torture and sentenced to five years imprisonment and to dismissal with disgrace from the Canadian Forces. Private Brown appealed these convictions to the Court Martial Appeal Court (CMAC), which is composed of civilian superior, federal and appellate court judges. The prosecution appealed Private Brown's sentence, asking for an increase to ten years imprisonment. In January 1995, the CMAC upheld both the conviction and sentence of the court martial. Private Brown applied for permission to appeal this decision to the Supreme Court of Canada (SCC). His request was denied.

27. Sergeant Gresty was charged with two counts of negligent performance of a military duty, alleging in particular that he failed to remain awake on the night of 16 March and that he failed to intervene to stop Arone's mistreatment. The maximum period of imprisonment upon conviction for these offences was two years less a day. At his trial, in March and April 1994, he was found not guilty of both charges. No appeal was initiated as a result of this decision.

28. Master Corporal Matchee was charged with second degree murder and torture in relation to the death of Arone. Evidence at the other courts martial, before and since, has portrayed Master Corporal Matchee as the main perpetrator in Arone's death. The maximum punishment he faced was life imprisonment with a period of parole ineligibility of 10 to 25 years. At his trial in April 1994, in Ottawa, on a preliminary motion, he was found unfit to stand trial by reason of a mental disorder, namely permanent, organic brain damage. This injury was caused by a lack of oxygen to the brain suffered during a failed suicide attempt following his arrest in March 1993 for his part in the death of Arone. Master Corporal Matchee has since been released from the Canadian Forces and turned over to civilian medical authorities. Should his condition ever improve sufficiently, he may be subject to a resumed trial on these charges.

29. In April 1994, Sergeant Boland, the guard commander, was charged with torture and negligent performance of a military duty, namely his duty to safeguard Arone. Sergeant Boland pleaded guilty to the negligence charge. The torture charge was stayed. He was sentenced to a 90 day detention and an automatic reduction to the rank of private. The prosecution appealed this sentence, seeking an increase to 18 months' imprisonment. In April 1995, the CMAC granted the prosecution's appeal and increased the sentence to a total of one year imprisonment. Private Boland has now served his sentence and has been released from the Canadian Forces.

30. Major Seward, who was effectively the company commander of the personnel involved in Arone's death, was charged with unlawfully causing bodily harm and negligent performance of a military duty arising from his instructions to his soldiers permitting the abuse of detainees. His court martial was held in May and June 1994. Major Seward was acquitted of the assault charge, but convicted on the negligence charge and sentenced to a severe reprimand. The prosecution appealed the sentence, seeking a prison term. Major Seward appealed the conviction of negligence. The CMAC heard both appeals in January 1996 and increased the sentence to three months' imprisonment and dismissal from the Canadian Forces.

31. Trooper (Private) Brocklebank was charged with torture and negligent performance of a military duty, relating to his involvement in the March 16 death of Arone. He faced a maximum punishment of 14 years in prison if convicted. At his court martial in October and November 1994, he was acquitted of both charges. The prosecution appealed both acquittals, but the CMAC rejected the prosecution's appeal in April 1996.

32. Captain Sox, the platoon commander of the soldiers who captured Arone, was charged with unlawfully causing bodily harm, negligent performance of a military duty in failing to control his subordinates and an act to the prejudice of good order and discipline in passing on Major Seward's order allowing the abuse of detainees. He faced a maximum ten year prison

sentence. Captain Sox was acquitted on the bodily harm charge, convicted on the negligence charge and the act to the prejudice charge was stayed. Captain Sox was sentenced to a reduction in rank to lieutenant and a severe reprimand. Both sides appealed aspects of the court martial decisions to the CMAC. The CMAC heard the appeals in April 1996; the appeals were rejected by the CMAC in July 1996.

33. The commanding officer, Lieutenant-Colonel Mathieu, was charged with negligent performance of a military duty arising from orders he gave which altered the rules of engagement pertaining to looters. There was, however, no direct connection between these orders and Arone's death. The maximum period of imprisonment to which he was liable was two years less a day. In June 1994, Lieutenant-Colonel Mathieu was acquitted. The prosecution successfully appealed that acquittal. In November 1995 the CMAC ordered a new court martial on this charge, which was held in January and February 1996. Lieutenant-Colonel Mathieu, who had retired from the Canadian Forces in 1995, was again acquitted of this charge.

34. Finally, the court martial of Captain Rainville on four charges, including unlawfully causing bodily harm and negligent performance of a military duty (which carries a maximum period of imprisonment of ten years), was held in September and October 1994. These charges related to an incident on the night of March 4, 1993, in which members of Captain Rainville's platoon shot two Somalis, who were suspected of attempting to break into the Canadian camp at Belet Huen. One Somali was wounded and the other was killed. The charges alleged that Captain Rainville improperly authorized his soldiers to open fire on suspected looters. He was acquitted on both charges and no appeal resulted from this decision.

35. In addition to the above disciplinary proceedings, on April 28, 1993, then Chief of Defence Staff, Admiral Anderson, ordered an extensive military Board of Inquiry into the Canadian Forces' general involvement in Somalia. That Board adjourned and issued an interim report when the above disciplinary proceedings rendered further work impossible. In light of the civilian inquiry described below, this Board of Inquiry has been dissolved.

36. On March 20, 1995 the Government of Canada established a public inquiry into the deployment of the Canadian Forces to Somalia in 1992/93. The deaths of several Somali citizens at the hands of Canadian soldiers, particularly the beating death of Mr. Shidane Arone, was a significant contributing factor to the establishment of this inquiry. However, the inquiry's mandate was not to try or retry cases that had already been dealt with under the military justice system. The Somalia Inquiry's mandate was to examine the chain of command, leadership within the chain of command, discipline, operations, actions and decisions of the Department of National Defence in respect of the pre-deployment, in-theatre and post-deployment phases of the Canadian Forces deployment to Somalia.

37. Chairing the Commission was Mr. Justice Gilles Létourneau of the Federal Court of Appeal. The other Commissioners were Mr. Justice Robert Rutherford of the Ontario Court, General Division, and Mr. Peter Desbarats, Dean of the Graduate School of Journalism,

University of Western Ontario. After conducting extensive hearings, the Commission submitted its final report to the Governor-in-Council on June 30, 1997.

(b) Case of *R. v. Finta*

38. The *Criminal Code of Canada* gives Canadian courts jurisdiction to try war crimes and crimes against humanity that are committed outside Canada. This jurisdiction is carefully circumscribed. The definitions of "war crime" and "crime against humanity" in the Code are tied to the state of international law at the time and in the place of commission of the alleged offence. The *Criminal Code* also provides that the rules of law relating to procedure and evidence in force at the time of the proceedings will apply to the proceedings.

39. On March 24, 1994, the Supreme Court of Canada, in *R. v. Finta*, reviewed the *Criminal Code* provisions on war crimes and crimes against humanity. The Court determined that Parliament had created two new offences of war crimes and crimes against humanity that, unlike other domestic offences, require fundamentally important additional *actus reus* and *mens rea* elements. The Court also held that the defence of obedience to the orders of a superior and the peace officer defence are available to members of the military or police forces in prosecutions for war crimes and crimes against humanity, provided that said orders were not manifestly unlawful. Yet, even where the orders are manifestly unlawful, defence will still be available to the accused where the accused had no moral choice but to follow them.

40. On January 31, 1995, the Minister of Citizenship and Immigration and the Minister of Justice and Attorney General of Canada announced a World War II War Crimes Strategy, which aimed at deporting and revoking the citizenship of alleged World War II criminals living in Canada. The announcement also indicated that, in light of the Finta decision, areas of possible legislative change would be reviewed to ensure that criminal prosecution is an option for war crimes and crimes against humanity cases.

Article 3

The Immigration Context

(i) General

a) The formal refugee process

41. Canada acceded to the *Refugee Convention* on June 4, 1969, and it entered into force on September 2, 1969. Consequently, Canada has bound itself not to expel from its territory persons from other states, whether nationals of those states or residents not having a state of nationality, should those persons be unable or unwilling to return to, or avail themselves of, the protection of their state of nationality or origin for reasons of race, religion, nationality, membership in a particular social group or political opinion (ss. 2(1)(a) *Immigration Act* S.C. 1985, c. I-2). Canada also provides similar protection for persons who, while not strictly

refugees on the basis of the *Refugee Convention* are nevertheless displaced or persecuted (ss. 6(2) and para. 114(1)(d) *Immigration Act*).

42. The *Immigration Act* sets out the procedure for obtaining refugee status in Canada. The Government has substantially amended the *Immigration Act* on several occasions, in part due to the arrival of massive numbers of new refugee claimants in Canada. Amendments were made to the *Immigration Act* on January 1, 1989, and again, on February 1, 1993, to improve and streamline the immigration and refugee determination system.

43. A refugee claim is submitted to the Immigration and Refugee Board, an independent administrative tribunal with the mandate to determine refugee claims. In applying the definition of Convention refugee, the members of the Immigration and Refugee Board hearing the refugee claim have to determine whether the claimant has a well-founded fear arising from persecution based upon one of the grounds listed in the *Refugee Convention*. The burden of proof, which is lower than the civil standard of a balance of probabilities, rests with the claimant. To succeed, a claimant must prove that his or her fear is based on a reasonable possibility of persecution if the claimant is returned to the country of origin.

44. The *Immigration Act* and the 1951 Convention do not define the term "persecution." However, the Federal Court of Appeal in *Chan v. M.E.I.* [1993] 3 F.C. 675 stated that torture, beating and rape are examples of persecution. In determining whether an act amounts to torture, and thus persecution, the Immigration and Refugee Board has frequently referred to the definition of torture in the Convention Against Torture. For example, the Board used the Convention definition of "torture" to determine if the sexual and domestic violence suffered by the claimant in that case amounted to "torture" and, therefore, constituted persecution.

45. While the definition of Convention Refugee defines a well-founded fear of persecution in terms of future action, section 2(3) of the *Immigration Act* provides that individuals can be held to be Convention Refugees, based on previous persecution. The Federal Court of Canada has also applied this provision to victims of torture.[1]

46. In evaluating the well-founded aspects of the claimant's prospective fear of return, the Immigration and Refugee Board members render a decision after a hearing at which claimants are given the chance to present the facts supporting their claims. In its hearings, the Immigration and Refugee Board often receives medical evidence from medical practitioners which, based on the physical evidence and the psychological profile of the claimant, may support the finding that torture occurred. Failure by the Board to consider such evidence appropriately will probably lead to its decision being overturned by the Federal Court of Canada.

47. Members of the Immigration and Refugee Board also receive ongoing training on victims of torture from representatives of the Canadian Centre for the Victims of Torture and the United Nations High Commissioner for Refugees (UNHCR). Furthermore, due to the psychological

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[1] See the case of Adaros-Serrano (1993) 22 Imm. L. R. (2d) 31.

conditions of claimants who have been the victims of torture, whenever possible the Board will provide hearing chamber participants that are gender and culture sensitive.

b) Humanitarian and compassionate review

48. In addition to the formal refugee claim process outlined above, the Department of Citizenship and Immigration conducts a broader discretionary review under s. 114(2) of the Immigration Act to determine whether extraordinary circumstances warrant granting that individual landed or permanent resident status. These reviews may be initiated internally within the Department or at the request of the refugee claimant. In theory, there is no limit to the number of times a person may apply for a humanitarian and compassionate review.[2] It is not unusual for individuals to apply several times.

49. Immigration officials review the applicant's written submissions and immigration file and may interview applicants. The Department of Citizenship and Immigration has developed guidelines to assist officers in properly assessing humanitarian and compassionate applications. The guidelines focus on the applicant's degree of attachment to Canada, such as marriage to a Canadian citizen or permanent resident, the personal circumstances of the applicant and his or her family members, and the hardship that would result should the applicant be removed from Canada and be required to apply for permanent residency from abroad.

50. These guidelines also extend to an assessment of risk to a person who may not fall within the scope of the Refugee Convention, but may nonetheless face mistreatment abroad. With respect to risk assessment, the guidelines state:

> Humanitarian and compassionate grounds exist when unusual, undeserved or disproportionate hardship would be caused to the person seeking consideration if he or she had to leave Canada. [... Some persons] may warrant consideration because of their personal circumstances in relation to current laws and practices in their country of origin. Such persons could reasonably expect unduly harsh or inhumane treatment in their country should they be removed. In these cases, there should be strong reasons to believe that the person will face a life threatening situation in his or her homeland as a direct result of the political or social situation in that country. Such situations are more likely to occur in countries with repressive governments or those experiencing civil strife or war.

51. A positive determination means that there are sufficiently compelling humanitarian and compassionate considerations to allow an individual to apply for and be granted permanent resident status. A decision that there are insufficient humanitarian and compassionate considerations to warrant this exceptional processing means that the applicant must comply with any removal order previously made. However, the individual is thereafter able to apply for permanent residency from abroad.

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[2] This review is available by request and upon payment of the requisite processing fee.

52. An individual may seek judicial review of a negative decision of an immigration official, with leave, before the Federal Court Trial Division. A decision of the Trial Division can be appealed to the Federal Court of Appeal if the Trial Division judge certifies that the case raises a serious issue of general importance. A decision of the Federal Court of Appeal may be appealed, with leave, to the Supreme Court of Canada.

c) Post-claim risk assessment

53. When the amendments to the *Immigration Act* came into force on February 1, 1993, new regulations under the Act established new procedures for persons not found to be Convention refugees. Part of the regulatory amendments involved the creation of a class entitled the post-determination refugee claimants in Canada class (PDRCC). The government's objective in creating this class was to identify individuals who, though determined not to be Convention refugees, face a serious risk of harm should they be returned to their country of origin. Individuals determined to be subject to such risk are able to apply for permanent residency in Canada under the Regulations.

54. The regulatory criteria for determining whether a person can benefit from inclusion in the class:

> "member of the post-determination refugee claimants in Canada class" means an immigrant in Canada
>
> (a) who the Refugee Division has determined on or after February 1, 1993, is not a Convention refugee [...]
>
> (c) who, if removed to a country to which the immigrant could be removed would be subjected to an objectively identifiable risk, which risk would apply in every part of that country and would not be faced generally by other individuals in or from that country,
>
> > (i) to the immigrant's life, other than a risk to the immigrant's life that is caused by the inability of that country to provide adequate health or medical care,
> > (ii) of extreme sanctions against the immigrant, or
> > (iii) of inhumane treatment of the immigrant [.]"

55. In this risk-assessment process, refugee claimants have an opportunity to make written submissions regarding the risks they would face if removed from Canada. They are formally advised of their ability to invoke this process.

56. Post-claim determination officers are provided with guidelines to be used in making their risk-assessment decisions. In the decision-making process, a post-claim determination officer reviews any submissions, as well as other relevant and available material, such as the individual's

immigration file and material from the Refugee Division hearing (including the individual's personal information form, hearing transcripts, relevant documentary evidence on country conditions presented at the refugee hearing, and the Refugee Division's decision). The post-claim determination officer may also consult recent country-specific information from other sources, such as Amnesty International, and other documentation available from the Refugee Board's Documentation Centre.

57. When a post-claim determination officer concludes that removal from Canada would engender an objectively identifiable risk as defined, the individual at risk is able to apply for permanent residency, provided that he or she meets the criteria for obtaining this status as set out in the Regulations. A decision that the individual has not met the risk-assessment criteria is subject to judicial review, with leave, before the Federal Court Trial Division. Further judicial recourse may be sought before the Federal Court of Appeal, and the Supreme Court of Canada.

58. Claimants thus benefit from a second opportunity to present the facts supporting their fear to return to the country of residence or citizenship by submitting an application to specifically trained immigration officers. This training includes information related to international instruments including the Convention Against Torture and is given by specialists involved with the Canadian Centre for the Victims of Torture, medical practitioners and by representatives of the Department of Justice of Canada.

59. As well, where credible allegations of acts of torture or crimes against humanity against individuals present in Canada but facing removal are brought to the attention of the Government of Canada, Canada investigates the possibility of prosecuting in relation to these allegations.

(ii) Factors and Difficulties

60. In 1994, the Committee Against Torture considered Communication No.15/1994, in which Mr. Khan alleged a violation of article 3 of the Convention resulting from a decision by Canadian authorities to return him to Pakistan, his country of origin. The Committee held that substantial grounds existed for believing that Mr. Khan would be in danger of being subjected to torture upon his return to Pakistan.

61. On March 3, 1995, the Government of Canada requested that the Committee reconsider its views on Communication No. 15/1994 with respect to certain jurisdictional issues, evidentiary standards and the relationship between Article 3 of the Convention and the *Convention on the Status of Refugees*. In response, the Committee addressed the issues raised in Canada's *note verbale* and concluded that it had no legal basis on which to revise its decision of November 15, 1994.

62. As a result of the Khan decision and other complaints pending before the Committee Against Torture, the Government of Canada is reviewing its immigration procedures to ensure that medical and other evidence relating to the risks associated with a return to countries of origin is considered by authorities early in the domestic immigration proceedings. The Government of

Canada is also reviewing the models used by other countries to assess risk of torture or other cruel or inhuman treatment.

The Extradition Context

63. The Second Report noted that, in the cases of *Kindler v. Canada (Minister of Justice)* and *Ng v. Canada (Minister of Justice)*, the Supreme Court of Canada held that the law of extradition and its exercise by the Minister was subject to s. 7 of the Charter: the right not to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice. According to the Court, extradition will violate s. 7 if the imposition of the penalty by the foreign state would shock the Canadian conscience. The Court noted that torture is a penalty so outrageous to the Canadian community that surrender would always be unacceptable.

64. In three decisions rendered on March 19, 1996, and a fourth delivered on April 3, 1996, the Supreme Court of Canada had to determine whether or not the extradition of fugitives to a jurisdiction with mandatory minimum sentences would violate section 7 of the Charter. (See *Canada (Minister of Justice) v. Jamieson, Ross v. United States of America, Whitley v. United States of America* and *Leon v. United States of America.)* In each of these cases, the fugitives claimed that extradition to the United States would violate section 7 of the Charter because, if found guilty, the individuals would face prison terms with mandatory minimum terms of ten to twenty years.

65. In these cases, the Court held that the penalties and the procedures that the fugitives would face in the United States would not "shock the conscience" or be considered "simply unacceptable" by the Canadian public. In the Court's view, the test is not whether the sentence in the United States would be considered fair and just in Canada, or Charter-compliant, but whether or not the consequences of an extradition are unconscionable or unacceptable. Extradition should be refused only where the sentence is so grossly disproportionate to the gravity of the alleged offence that it is fundamentally unjust.

66. A relevant consideration for the Court was the fact that, though the penalties in the United States are more severe, they are neither arbitrary nor capricious, and are democratically decided. The Court also took into consideration the factual circumstances of these cases and found that the sentences, which were for drug offences, could be justified due to the seriousness of the problem in the United States. Further, the United States judicial system affords an accused certain procedural protections and the opportunity to present a defence.

67. The Court also adhered to previous cases which had held that the judiciary should not lightly interfere with executive decisions and the exercise of prosecutorial discretion. Taking into consideration the executive's expertise and its duty to ensure that Canada meets its treaty obligations, judicial intervention is to be limited to the clearest of cases.

Article 4

68. In the past, the Committee has asked for statistics about prosecutions for torture under the *Criminal Code* in Canada. The Canadian Centre for Justice Statistics does not have records of convictions for all offences under the *Criminal Code*. Although it appears that there have not been any prosecutions for torture, it is hard to determine this point definitively, since prosecution of criminal offences falls within provincial jurisdiction.

69. As mentioned in the discussion under Article 2 in this Report, members of the Canadian Forces Airborne Regiment were charged with a variety of offences, including torture, and tried by general courts martial in relation to events in Somali during the deployment of Canadian Forces as part of the United Nations efforts in Somalia. The more detailed discussion under Article 2 sets out the nature of the charges and the results in each proceeding.

Article 6

70. Canada's First Report indicated that a peace officer who has reasonable grounds to believe that a person has committed an indictable offence, such as torture, may arrest that person without warrant for the purpose of criminal proceedings. All extradition treaties entered into by Canada provide that a provisional warrant of arrest may be obtained to secure the physical custody of a fugitive. However, a person arrested for the purpose of extradition will be set at liberty if proper supporting documentation is not received within a certain period of time, normally 45 days.

71. The First and Second Reports indicated that the RCMP Operational Manual addresses the requirements of Article 6 paragraph 3.

Article 8

72. Canada's Second Report stated that a multilateral agreement, to which Canada is a party and which provides for the extradition of individuals for certain offences, operates as a binding agreement for the purposes of the *Extradition Act*. This is so regardless of whether there is a treaty in force between Canada and the other State Party and regardless of whether the treaty has been expressly promulgated into law. Thus, Canada may use the Convention as the basis for extradition to another State Party.

Article 9

73. The Second Report noted that the *Mutual Legal Assistance in Criminal Matters Act* provides the legal framework for the implementation of treaties between Canada and other states for the purposes of fostering cooperation in the investigation and prosecution of crimes. The Act provides for five basic forms of assistance: (i) the gathering of evidence, including taking statements and testimony; (ii) the execution of search warrants; (iii) the temporary transfer of

prisoners for the purpose of testifying or providing other assistance; (iv) the lending of exhibits; and (v) assistance with respect to the proceeds of crime.

74. Between April 1, 1992, and April 1, 1996, Canada entered into treaties pursuant to the Act regarding mutual legal assistance with various countries, including China, India, Italy, Korea, Spain, Switzerland and Thailand. In the event of an alleged case of torture, and in the absence of a mutual legal assistance treaty, mutual assistance would also be available on the basis of ad hoc administrative arrangements or on the basis of non-treaty assistance.

Article 10

General

(a) Royal Canadian Mounted Police

75. The Second Report noted that the type of training RCMP recruits receive is based on two fundamental principles:

1) the avoidance of force, if at all possible, in achieving the objectives of law enforcement, and

2) restraint, i.e., only as much force as is reasonable and necessary.

76. This training, described more extensively in the Second Report, includes a session on the prohibition against torture under the topic, "Arrest, Release and Detention," in the "Criminal Law" course. Training in relation to the *Canadian Charter of Rights and Freedoms* is also provided.

(b) Correctional Service of Canada

77. The Second Report noted that all CSC employees receive training on the policy and application of the use of force, including courses on the prohibition of torture and similar acts.

78. Employees are instructed on the interpretation and application of those provisions of the *Criminal Code* and of CSC Directives, Standards and Guidelines which relate to the use of force, for example, in courses covering such topics as arrest, control and the use of weapons and chemical agents. They also receive training in the interpretation and application of legislation that prohibits torture and other cruel, inhuman or degrading punishment (e.g., the *Canadian Charter of Rights and Freedoms* and the *Corrections and Conditional Release Act*).

79. The duration of orientation training ranges from one week for staff with no contact with offenders to twelve weeks for correctional officers. Medical officers receive eight weeks' training. Refresher courses are offered on a regular basis.

(c) Department of National Defence

80. Members of the Canadian Forces called upon to assist civil authorities during a riot or disturbance in Canada receive specific training on the use of minimum force. The level of force authorized in such operations is similar to that approved for other peace officers.

81. Members of the Canadian Forces deploying on all international operations receive training on the Rules of Engagement applicable to a particular operation, as well as the Soldiers Code of Conduct. Rules of Engagement will contain specific directions on the treatment of detainees if the apprehension and detention of persons is authorized for the operation. The Soldiers Code of Conduct summarizes humanitarian treaties, conventions and customs that are binding on Canada under international law. Specifically, Rule 8 of the Soldiers Code of Conduct states: "In accordance with the Convention on Torture, do not torture, kill or abuse detainees. They are to be treated humanely and afforded adequate food, water, shelter and medical care."

Other

82. The Canadian Centre for Victims of Torture (CCVT) was established in 1983 to respond to the unique needs of torture victims and their families and to increase public awareness in Canada and abroad of torture and its effects in Canada. The federal government, in particular Human Resources Development Canada, funded various CCVT projects, including funding for a project to train practitioners, staff and others working with survivors of torture.

Article 11

Factors and Difficulties

(a) Correctional Service of Canada

83. In April 1994, inmates at the Prison for Women in Kingston assaulted six correctional officers, seriously injuring two. (Five inmates were subsequently convicted of assault, attempted hostage-taking, attempted escape and assaulting a peace officer.) As a result of this incident, the inmates were placed in segregation. When seriously disruptive behaviour continued in segregation, the Institutional Emergency Response Team (IERT) was brought in from Kingston Penitentiary. Over the course of eight hours, all the inmates in segregation were placed in restraint equipment, stripped of regular clothing and placed in paper gowns by female officers in the presence of, and when required, with the assistance of the all-male emergency response team. The treatment of the inmates was subsequently investigated by an internal Board of Investigation convened by the Commissioner of Corrections and by the Correctional Investigator, an ombudsman for inmates in federal correctional institutions. The reports of these two investigations differed both in matters of fact and interpretation of the findings.

84. On April 10, 1995, the Honourable Louise Arbour, Justice of the Court of Appeal of Ontario, was appointed to head the *Commission of Inquiry into Certain Events at the Prison for*

Women in Kingston. The inquiry was convened following the Solicitor General's receipt of the conflicting reports from the Correctional Service and Correctional Investigator as to the events that occurred at the Prison for Women.

85. Justice Arbour's mandate was to "investigate and report on the state and management of that part of the business of the Correctional Service of Canada that pertains to the incidents which occurred at the Prison for Women in Kingston, Ontario, beginning on April 22, 1994, and further, to make recommendations to the policies and practices of the Correctional Service of Canada in relation to the incidents."

86. The Solicitor General released the report of the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* to the public on April 1, 1996. As a result, the Solicitor General asked the Deputy Solicitor General to convene a senior level Steering Committee composed of representatives from various government departments to examine the findings and recommendations and report back to him.

87. At its first meeting, the Steering Committee formed a working group, composed of members from the Steering Committee's departments, to review and develop an appropriate response to the Arbour Report's recommendations.

88. The following key recommendations were accepted:

- appointment of a Deputy Commissioner of Women's Corrections and recommendations for related organizational and program changes;
- that a women's facility have only female front-line workers;
- that a "Monitor" be appointed to report on implementation of the cross-gender staffing policy;
- policy amendments to ensure that, under no circumstances, would males participate in or witness the strip-searching of women in CSC women's facilities;
- at each facility, CSC will have either an all female IERT or an arrangement with outside police agencies to assist in maintaining security or restoring order;
- a Department of Justice review to determine what effective sanctions can be devised which will be consistent with effective management of the institutions and to identify how to implement these;
- a Task Force on Administrative Segregation will visit all segregation units and enhanced units in the country and issue a report in early 1997; and
- CSC launch of a comprehensive review of its policy framework. Where new policies must be enacted, CSC will ensure that these are clear and realistic and that staff receive appropriate training in its application.

89. The following key recommendations have already been implemented or are being implemented:

- that the report be made public;

- that all inmates be given the right to counsel before consenting to body cavity searches;
- that federal women's institutions be designed so as to ensure privacy while using washrooms or when dressing and undressing;
- that policy be developed at all women's facilities concerning crisis intervention and non-violent methods of intervention; and
- that all National Boards of Investigation include a member from outside the CSC.

Article 12

90. On April 23, 1993, the Canadian Forces commenced an inquiry into the Canadian deployment to Somalia following the March 1993 deaths of two Somalis in and around the Canadian compound in Belet Huen, Somalia. A parallel investigation into the two deaths was conducted by military police assisted by a military medical officer (pathologist), a civilian forensic pathologist and a civilian police ballistics expert. As a result of these investigations, nine soldiers ranging in rank from private to lieutenant colonel were charged with a variety of offences, including torture, and tried by general courts martial. The courts martial are discussed in further detail under Article 2 of this Report.

Article 13

General

91. The First Report stated that a person may initiate criminal charges and proceedings before a justice pursuant to s. 504 of the *Criminal Code* and may personally prosecute the offences subject to the right of the Attorney General to intervene and take carriage of the prosecution. These proceedings may be initiated in addition to any complaints under disciplinary proceedings, such as those discussed below.

(a) Royal Canadian Mounted Police

92. The Second Report noted that members of the public may submit complaints regarding the on-duty conduct of RCMP officers to the Public Complaints Commission (PCC), an administrative body independent of the RCMP. The aim of this procedure is to ensure that members of the public will have their complaints fairly and impartially dealt with, and that in examining complaints, the public interest in the fair and proper enforcement of the law will be taken into account. Since April 1992, the Public Complaints Commission has held three hearings. These dealt primarily with the issue of "excessive force," with two of these addressing the use of firearms.

(b) Correctional Service of Canada

93. On November 1, 1992, a new law, the *Corrections and Conditional Release Act* and regulations thereunder came into force. This Act codifies numerous policies and practices which were previously set out in Commissioner's Directives and brings these policies and practices in

line with the *Canadian Charter of Rights and Freedoms*. The new law regulates all aspects of incarceration including transfers, isolation and searches. The purpose of this legislation is identified in section 3 and includes not only carrying out sentences imposed by the courts but also assisting the rehabilitation of offenders and their reintegration into the community. Correctional Service of Canada guiding principles are set out in s. 4 of the Act.

94. Section 4(e) of the *Corrections and Conditional Release Act* indicates that offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence being served. The rights of inmates include the right to access to the grievance procedure of their institution, the right to make complaints to the correctional investigator, and the right to communicate confidentially with a lawyer.

95. Relevant Commissioner's Directives include:

- ensuring that inmate complaints and grievances are dealt with promptly (CD 081);
- providing inmates with reasonable access to legal counsel and advice (CD 084);
- regulating the use of force (CD 605);
- ensuring high standards of conduct for CSC employees (CD 060);
- ensuring adequate access to health services (CD 800); and
- ensuring consent to health services (CD 803)

96. The Act regulates the manner of detention, emphasizing security, health and personal dignity. In keeping with Canada's obligations under the Convention, the Act clearly prohibits all cruel and unusual treatment or punishment, including the use of corporal punishment as a sanction.

97. Finally, the Act officially establishes the office of the Correctional Investigator of Canada, which was created in 1973 under the aegis of the *Public Inquiries Act*. The Correctional Investigator is accountable to the Solicitor General of Canada, who tables reports concerning inmates' grievances before the House of Commons.

Article 14

98. In the presentation of Canada's First and Second Reports, the Committee sought clarification about whether a victim is guaranteed compensation in cases in which a perpetrator is acquitted due to lack of evidence. Generally, if a police investigation concludes that there has been no offence, there is no right to compensation. However, if the victim has reported the offence to the police, the victim may be entitled to compensation from the program, if otherwise eligible, despite the fact that an offender is not apprehended, charged and or convicted. It should be noted that such compensation provisions stem from special programs established by provincial governments. As such, there is some variation among jurisdictions as to compensation schemes. More information on criminal injuries compensation arrangements can be found in Canada's Reports under the *International Covenant on Civil and Political Rights*.

An injured party may also seek compensation or other remedies through the courts, even when the offender is a government official.

Article 16

99. As indicated in Canada's First Report, the Supreme Court of Canada has found that the protection against cruel and unusual treatment or punishment in s. 12 of the Charter is violated by conduct so excessive as to outrage standards of decency. In *R. v. Luxton*, the Court held that a mandatory sentence of life imprisonment with no parole eligibility for 25 years for first degree murder (i.e., planned and deliberate) did not infringe s. 12 of the Charter. The mandatory sentence, according to the Court, was deservedly severe, reflecting the fact that first degree murder is the most serious crime in criminal law and encompasses the most serious level of blameworthiness.

100. In *R. v. Goltz*, the Court also held that s. 12 was not violated by a mandatory seven day term of imprisonment for knowingly driving a motor vehicle while prohibited. Factors influencing the Court's conclusion: the accused had to commit the offence "knowingly"; the need to protect public safety; and the prior order prohibiting a person from driving was subject to numerous safeguards.

101. In presenting Canada's Second Report, the Committee inquired about s. 43 of the Criminal Code and the legal status of corporal punishment in Canada. Section 43 of the *Criminal Code* provides justification for the limited use of force by a parent, teacher or person acting in lieu of a parent where that force is used for corrective purposes and is reasonable in all of the circumstances. It does not authorize the abuse of children. The standard used to determine what is "reasonable" is that of the contemporary Canadian community. Case law has demonstrated that what was considered a reasonable method of correction in Canada 10 to 20 years ago is likely no longer considered reasonable.

102. The issue of corporal punishment of children is also addressed in Canada by provincial/territorial child protection legislation, which does not permit any form of child abuse. This legislation usually also addresses the issue of use of force by foster parents. Further, most provincial/territorial education legislation prohibits the use of corporal punishment by teachers.

103. The Department of Justice has been monitoring s. 43 of the *Criminal Code*, as it does all legislation within its jurisdiction. This "review" is on going. The Department's review of corporal punishment has included, for example, the release of two papers on the issue: *Literature Review of Issues Related to the Use of Corrective Force Against Children* (by Nanci Burns, WD1993 June 1993); and *International Perspectives on Corporal Punishment Legislation: A Review of 12 Industrialized Countries* (by Nanci Burns, August 1992). The Department of Justice also contributed funding to a Health Canada project: *Corporal Punishment: Research Review and Policy Recommendations* (by Joan Durrant, Linda Rose-Krasnor; March 1995).

104. In May 1995, Canada presented its first report under the *Convention on the Rights of the Child (CRC)*. Although the Committee on the Rights of the Child did not directly find that s. 43 was in breach of the CRC, it recommended that Canada review s. 43 and consider repealing it. No decisions have been taken yet in response to the Committee's views.

Documentation

The following documents were submitted to the United Nations with the present report:

Canadian Charter of Rights and Freedoms

Immigration Act, R.S. 1985, c. I-2

R. v. Brown (1995), 5 C.M.A.R. 280.

Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston, The Honourable Louise Arbour, Commissioner, 1996.

Corrections and Conditional Release Act, R. S. 1985, c. C-44.6

Correctional Service of Canada Commissioner's Directives:

#081 - Inmate Complaints and Grievances
#084 - Inmates, Access to Legal Assistance
#605 - Use of Force
#060 - Code of Discipline
#800 - Health Services
#803 - Consent to Health Service Assessment, Treatment and Release of Information

PART III: MEASURES ADOPTED BY THE GOVERNMENTS OF THE PROVINCES*

NEWFOUNDLAND

Part 1: Information on new measures and new developments relating to the implementation of the Convention

105. This Report covers the period from January 1, 1992, to May 31, 1996.

Article 2

106. The responsibility for the delivery of Youth Correctional Services is now a shared jurisdiction between the Department of Justice and the Department of Social Services. The Department of Justice is responsible for secure custody services while the Department of Social Services provides all other services for young offenders, including open custody (group homes, foster homes), community supervision (probation), alternative measures and the preparation of presentence reports.

107. Pursuant to the provisions of the *Fatalities Investigation Act*, S.N. 1995, c. C-30.1, if a death occurs at an institution, including all correctional institutions, at a treatment facility or while a person is in the custody of the Director of Child Welfare or of a peace officer, the medial examiner must investigate that death.

Article 10

108. The Royal Newfoundland Constabulary will provide training for all members on officer safety and the use of force. This is to be an ongoing process in which officers will receive basic training with annual refresher courses thereafter.

109. The Royal Newfoundland Constabulary is in the process of developing a "Use of Force" continuum. This continuum will describe the nature of a complaint and the degree of force, if any, that would be applicable in a particular situation.

Articles 12 & 13

110. Under the authority of the *Fatalities Investigations Act*, if the Chief Medical Examiner deems it necessary, for the protection of the public interest or in the interest of public safety, to

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* Geographical order, east to west

hold an inquiry regarding one or more deaths that have occurred under the unusual circumstances listed, or in a treatment facility or institution, he or she may recommend to the Minister of Justice that a public inquiry be held. If the Minister is satisfied that such an inquiry is necessary, the Minister may order a Judge to conduct an inquiry.

111. The *Royal Newfoundland Constabulary Act* was repealed and replaced with the *Royal Newfoundland Constabulary Act, 1992*. The new Act provides two avenues for the general public to address their concerns regarding conduct of Royal Newfoundland Constabulary members. The first is the Royal Newfoundland Constabulary Public Complaints Commission, which receives and investigates complaints against members of the Royal Newfoundland Constabulary. This Commission is governed by legislation under the *Royal Newfoundland Constabulary Act, 1992*, and the *Royal Newfoundland Constabulary Public Complaint Regulations, 1993*.

112. When the Public Complaints Commission receives a complaint, the Internal Review Section of the Royal Newfoundland Constabulary investigates. The Chief of Police has the authority to dismiss the complaint, take disciplinary action, or with the agreement of all parties, settle the matter (informal resolutions). Either party may appeal the decision of the Chief of Police to the Public Complaints Commission. The Commissioner will investigate the complaint and attempt to effect a settlement, dismiss the complaint and confirm the decision to the Chief of Police or refer the matter to the Chief Adjudicator of the Panel appointed under the Act. The Panel will conduct a hearing into the matter and render an appropriate order. The Adjudicator's decision may be appealed to the Trial Division of the Supreme Court of Newfoundland.

113. If a person does not wish to approach the Public Complaints Commission, he or she may file a complaint against the officer and have the matter dealt with internally. The complaint will be investigated and the Chief of Police will decide if disciplinary action is warranted.

114. Often, a person may not wish to use either of these two options and simply wants the matter brought to the attention of the Chief of Police. When this occurs, the Royal Newfoundland Constabulary will launch its own investigation and take action when necessary.

115. The *Parliamentary Commissioner (Ombudsman) Act* has been repealed.

Article 14

116. The *Victims of Crime Services Act* came into effect 1988. The Act recognizes the needs of victims and states that victims should have access to social, legal, medical and mental health services that respond to their various needs. The Act establishes the Victims of Crime Services Division of the Department of Justice.

117. The *Criminal Injuries Compensation Act* has been repealed.

Article 16

118. The *Child Welfare Act* was amended in 1992 to broaden the parameters for the mandatory reporting of suspected child abuse.

Part II: Additional Information Requested by the Committee

119. Appendices NF-1 and NF-2 outline the nature of the complaints that have been brought against various members of the Royal Newfoundland Constabulary. These appendices also outline the number of complaints in each category as well as the outcome of each investigation.

120. There have been a number of complaints brought against correctional officers during the period under review that involve excessive use of force. In all such cases, the inmate's complaint is referred to the local law enforcement agency for independent investigation. There were two complaints in 1995 and six in 1996.

121. There have been no convictions under the *Criminal Code* for excessive use of force against the Royal Newfoundland Constabulary or correctional officers. However, two correctional officers were convicted in 1996 of failing to provide the necessities of life when a prisoner died in custody. That conviction is under appeal.

122. The Royal Canadian Mounted Police advises that, for the period from January 1, 1992 to December 31, 1994, six members were charged with assault. The Crown withdrew one of these charges and three were dismissed due to lack of evidence. One member was convicted of common assault and received a $200 fine. The second member was found to lack authority to make an arrest and was accused of having non-consensual physical contact. The member was found guilty of a charge of common assault. The Court disposed of the matter by way of absolute discharge. From January 1, 1995 to December 31, 1995, there were eight allegations of excessive or unnecessary use of force. All eight allegations were found to be unsupported by the evidence. In the first part of 1996, one allegation of excessive use of force was investigated and a charge of assault was laid against one member under the *Criminal Code*. The matter is before the Courts.

Appendix NF-1

Complaints Against Police, 1992

1992	Discipline	Unfounded	Unsubstantiated	Unknown	Awaiting Disposition
Force	--	--	--	--	--
Harassment	--	2	1	--	--
Assault	--	3	--	1	--
False Arrest	--	5	--	--	--
Police Abuse	--	2	1	--	--
Unlawful Arrest and Detention	--	2	--	--	--
Threats	8(1)B RNC Reg.	1			

Complaints Against Police, 1993

1993	Discipline	Unfounded	Unsubstantiated	Unknown	AD	WDRN	Inf. Res.
Force	--	1	2	--	--	--	--
Harassment	3 verbal reprimand	--	3	--	--	3	1
Assault	1 reprimand	1	6	--	--	2	--
False Arrest	--	1	1	--	--	--	--
Improper Treatment	--	1	4	--	--	2	1
Unlawful Arrest and Detention	--	--	3	--	--	2	--
Threats by Police	--	--	1	--	--	1	--
Unlawful Search	--	1	3	--	--	--	--

AD = Awaiting Disposition WDRN = Withdrawn Inf. Res. = Informal Resolution

Complaints Against Police, 1994

1994	Discipline	Unfounded	Unsubstantiated	Unknown	AD	WDRN	Inf. Res.
Force	1-RNC Reg.	3	6	1	--	3	--
Unlawful Arrest and Detention	--	--	--	1	--	--	--
Assault	--	1	--	--	--	--	--
	1 written reprimand	--	--	--	--	--	--

Complaints Against Police, 1995

1995	Discipline	Unfounded	Unsubstantiated	Unknown	AD	WDRN	Inf. Res.
Force	1 RNCA	5	2	--	--	1	--
Harassment	--	1	--	--	--	--	--
Assault	--	--	1	--	--	--	--
False Arrest	--	--	2	--	--	--	--
Intimidation	1(3(1) RNC Reg.	--	1	--	--	--	--

Complaints Against Police, 1996

1996	Discipline	Unfounded	Unsubstantiated	Unknown	AD	WDRN	Inf. Res.
Force	--	1	2	--	6	--	--
Harassment	--	--	3	--	--	3	1
Assault	--	1	1	--	--	2	--
Violation of Rights	--	1	1	--	--	--	--
False Arrest	--	1	4	--	1	2	1
Discrimination	--	1	3	--	--	2	--
Illegal Search	--	2	1	--	--	1	--
Extortion	--	1	3	--	--	--	--

AD = Awaiting Disposition WDRN = Withdrawn Inf. Res. = Informal Resolution

Total Complaints 1994 - July 1996

1993	Discipline	Unfounded	Unsubstantiated	Unknown	AD	WDRN	Inf. Res.
Use of Force	2	10	10	1	4	6	0
Harassment	1	3	4	--	3	3	1
Assault	1	5	8	1	2	2	--
False Arrest	--	1	8	1	--	--	--
Police Abuse	--	2	1	--	--	2	1
Unlawful Arrest and Detention	--	2	3	1	2	2	--
Threats by Police	1	1	1	--	1	1	--
Violation of Rights	--	1	1	--	--	--	--
Improper Treatment	--	1	4	--	2	--	1
Unlawful Search	--	3	3	--	--	--	--
Intimidation	1	--	1	--	--	--	--
Illegal Entry	1						
Extortion	--	1					
Discrimination	--	1					

AD = Awaiting Disposition WDRN = Withdrawn Inf. Res. = Informal Resolution

Appendix NF-2

Total Number of Complaints = Percentage Breakdown of each Complaint Category

Force	29.7%
Harassment	10.8%
Assault	15.3%
False Arrest	9.0%
Police Abuse	2.7%
Unlawful Arrest and Detention	1.2%
Threats by Police	3.6%
Violation of Rights	1.8%
Improper Treatment	7.2%
Unlawful Search	5.4%
Intimidation	1.8%
Extortion	0.9%
Discrimination	0.9%
Illegal Entry	0.9%

PRINCE EDWARD ISLAND

123. The Government of Prince Edward Island reports that, in the period covered by this report, no new developments occurred that would add to the information already contained in previous reports.

NOVA SCOTIA

124. This report covers the period from April 1, 1992 to April 1, 1996.

Article 2

125. The provincial Department of Justice enforces the provisions of the Canadian *Criminal Code*, including s.269.1, which specifically categorizes torture as an indictable offence and eliminates the defence of superior orders.

126. The Nova Scotia *Hospitals Act*, R.S. 1989, c.208, states that, if a peace officer apprehends and detains a person for a medical examination that may result in admission to a psychiatric facility, the officer must file a full report with the Attorney General within twenty-four hours of the apprehension. The person detained must receive the medical examination within twenty-four hours of admission, and a person who is formally admitted may apply to have his or her declaration of capacity or competency reviewed by a review board.

127. In 1993, a patient representative position was created at the Nova Scotia Hospital, a psychiatric facility. The Patient Representative investigates complaints, assists with appeals and ensures that every ward has a poster outlining patient's rights. Since 1995, the information is also available on a video that is offered to every new patient. Hospital staff are monitored to ensure their compliance with this procedure. Major hospital committees that affect patient services are now structured to ensure that a patient (or a family member of a patient) sits on this committee.

Articles 6 and 7

128. The *Liberty of the Subject Act*, R.S. 1989, c.253, is the provincial *habeas corpus* legislation. It guarantees that there shall be no abrogation or abridgement of the remedy by the writ of *habeas corpus* at common law and further guarantees that the remedy exists in full force and is the undeniable right of the people of this province.

Article 10

129. All provincial Corrections officers receive a mandatory basic training course that includes an examination of the *Canadian Charter of Rights and Freedoms*. Since 1992, approximately 25 percent of Corrections Officers have taken additional training in Verbal Crisis Intervention, a course designed to reduce physical intervention. The training is still offered to those officers who have not yet had the opportunity to take part. The Correctional Services Program, taught at the community college level, is developing a Program Advisory Committee comprised of members from youth corrections, group homes, federal and provincial departments of justice, and university criminology departments. The Program examines the *Canadian Charter of Rights and Freedoms* and the Nova Scotia *Human Rights Act*.

130. In March 1996, Nova Scotia became the first province in Canada to implement a province-wide Use of Force Policy. This policy is designed to reduce unnecessary force and injury to police or suspects and outlines the use of alternative tools to lethal force. Approximately 97 percent of the province's peace officers have taken the two-day course associated with the policy; the course will be repeated on a yearly basis for all officers.

131. Throughout the period of this report, the province has been structuring an inter-agency "Critical Incident Investigation Task Force." The Task Force will be comprised of representatives from the Royal Canadian Mounted Police, municipal police, Military Police, the Department of Natural Resources, the Department of Fisheries and Ports Canada. The Task Force will investigate any death or serious injury to or caused by a peace officer. The investigation will be headed by an agency other than the agency involved in the incident; a public report will be issued.

Article 11

132. The *Corrections Act*, R.S. 1989, c.103, provides for the safe custody and security of offenders and for inspection of lock-up facilities and compliance with prescribed standards.

Article 12

133. The *Fatal Inquiries Act*, R.S. 1989, c.164, provides for an investigation into the cause and manner of the death of a person in a jail or prison, or other location where there is reasonable cause to suspect that the person died by violence or through culpable negligence.

Article 13

134. Under the *Police Act*, R.S. 1989, c.348, the Nova Scotia Police Commission is authorized to investigate complaints against the police. Complaints that are not resolved by the Commission may be referred to the Review Board, which must hold a public hearing and provide written reasons for its decisions. The Review Board may vary or affirm penalties against officers or

award costs. In 1995, the Review Board conducted thirteen hearings. The Commission received a total of 145 public complaints in 1995; complaints for the first half of 1996 are down slightly.

135. In 1995, the Annual Report format was changed to specifically mention violations of the Nova Scotia *Human Rights Act* as a category of allegation; two such allegations were received in 1995.

136. In 1994, regulations made pursuant to the *Police Act* were amended to require municipal police departments to report internal disciplinary matters to the Police Commission. The Commission received a total of 45 internal disciplinary matters in 1995; the number has dropped sharply for the first half of 1996.

137. The Annual Report of the Nova Scotia Police Commission is made available through public libraries and the Nova Scotia government bookstore.

138. The *Ombudsman Act*, R.S. 1989, c.327, authorizes staff from the Office of the Ombudsman to enter premises and investigate allegations of any offence against an inmate of a corrections facility or against a patient in a psychiatric hospital. Where other avenues of redress exist, the staff may examine both whether the process and policy is fair and, if so, if the process was followed correctly.

139. In 1994, the Office of the Ombudsman began tallying Correctional Services complaints independently of those filed against the parent Department of Justice. In February 1996, the Office initiated a schedule of monthly visits to all youth correctional facilities and created a Registry of Complaints open to both inmates and non-management staff of those facilities.

Article 14

140. The *Fatal Injuries Act*, R.S. 1989, c.163, provides for the right of family members to maintain an action and recover damages for a death caused by neglect or a wrongful act.

141. Under the *Proceedings Against the Crown Act*, R.S. 1989, c.360, the government is subject to liability for torts committed by its agents and officers, including officers performing legal duties.

Article 16

142. In 1991, the Nova Scotia *Human Rights Act*, R.S. 1989, c.214, was revised to state: "No person shall sexually harass an individual." In the period covered by this report, seven complaints of sexual harassment have proceeded to a full Board of Inquiry.

NEW BRUNSWICK

143. This report will outline changes made since the Second Report and provide additional information regarding New Brunswick's adherence to the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.* It covers the period from January 1, 1992 to December 31, 1996.

144. New Brunswick is committed to the principles of the Convention Against Torture and to fully implementing Convention provisions within its jurisdiction.

Article 2

145. The *Custody and Detention of Young Persons Act,* R. S.N.B. 1973, c. C-40, recognizes and declares that young persons who commit offences have special needs and require guidance and assistance. They have rights and freedoms in their own right, including those stated in the *Canadian Charter of Rights and Freedoms*, and in particular, a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them.

Article 10

146. There are two nursing schools in New Brunswick: the Faculty of Nursing at the University of New Brunswick, and *L'école des sciences infirmières* at the *Université de Moncton.* The Faculty of Nursing has introduced specific content into its Year II curriculum dealing with the care of persons who have been subject to torture or other cruel, inhuman or degrading treatment. In years II, III and IV of the program, students work in a variety of community and tertiary care agencies where application of this knowledge is reinforced. *L'école des sciences infirmières*, as part of its curriculum, offers training on the care of victims of physical and sexual abuse, regardless of the cause of the alleged abuse.

147. The New Brunswick Community College in Miramichi City, which runs the Correctional Techniques Program, the Youth Care Workers Program and the Criminal Justice Program, has taken steps to implement education on the Convention Against Torture into these three training areas. The content on the Convention has been added to the Correctional Operations course and the Youth Care Operations course, one of which must be studied by every student in the above-mentioned programs. These operations courses contain specific content dealing with: "code of conduct" guidelines for correctional and youth care workers; the *Canadian Charter of Rights and Freedoms*, with specific reference to section 12 on the legal right not to be subjected to cruel and unusual punishment; *Criminal Code* of Canada guidelines for the use of reasonable force and the *Correctional Jurisdiction Policy* on use of force guidelines and policies; discussions on topical or current incidents of torture and the use of excessive force; workshops on harassment in relation to co-workers and clients in the criminal justice system; and specific discussions on, and review of, the Convention Against Torture.

148. There is no training facility for police officers in New Brunswick. The regional training centre is Holland College, located in Charlottetown, Prince Edward Island, which also trains correctional officers. The training of police and correctional officers is consistent with the principles of the *Canadian Charter of Rights and Freedoms*, the *Criminal Code* of Canada and the UN Convention Against Torture, all of which are referred to in the course of the programs. Training includes significant emphasis on inmate rights, procedures for handling inmates, methods of restraint, consequences of the use of force, and non-force methods of discipline. Holland College is also involved in providing continuous on-the-job training.

Article 11

149. The Department of the Solicitor General conducted a study into the policing arrangements and policies of the Province of New Brunswick, with a view to formulating a rational basis for the modification of existing arrangements. A report, prepared in 1992, included several recommendations.

150. A report was prepared in 1995 by a Commission of Inquiry, established by Order-In-Council 92-1022, on the mistreatment of young people in the care and custody of the New Brunswick Training School. The Commission of Inquiry made several recommendations for the prevention of physical and sexual abuse of young people in care and custody.

151. In 1996, Jay Chalke prepared a report on a review of certain practices in New Brunswick correctional institutions. The Terms of Reference of the Review established by the Solicitor General were:

(i) to examine current practices giving rise to the use of restraint and segregation of adult and young offenders in New Brunswick provincial correctional institutions in relation to acceptable national and international standards;
(ii) to assess the appropriateness of restraint devices currently in use;
(iii) to assess the adequacy of staff training as it pertains to the above practices;
(iv) to assess the adequacy of internal and external mechanisms to monitor the use of restraint and segregation in order to ensure that abuses do not occur and that these practices are fair, humane and comply with legal standards, including the *Canadian Charter of Rights and Freedoms*; and
(v) to present findings and, if appropriate, recommend changes to legislation, policy and practices, applicable to the New Brunswick Correctional System.

Article 13

152. Amendments to the *Police Act* were recommended by the New Brunswick Police Commission, enacted by the Legislative Assembly and proclaimed effective on May 31, 1996. These amendments empower the New Brunswick Police Commission to investigate directly, on its own initiative, in response to a complaint, or at the request of a board or council, any matter relating to any aspect of the policing of any area of the province. Under the former provisions of

the *Police Act,* the Commission had to refer all complaints alleging misconduct by Regional or Municipal Police Officers to their respective police chiefs for investigation, raising ethical concerns about the practice of police investigating police. Under the amended Act, the Commission may refer a complaint related to the conduct of a police force member to the chief of police (as long as the chief is not the subject of the complaint), or investigate the complaint itself by appointing an investigator or conducting a hearing. The amendments also require chiefs of police to inform the Police Commission within twenty days of all complaints received. When a chief of police has referred an investigation to the Commission, the chief must submit the full details of the investigation to the Commission within twenty days of its completion.

153. In June 1995, the membership of the New Brunswick Police Commission was expanded to include both male and female representatives from various areas of the province. This broader Commission is better equipped to handle complaints and investigations.

Article 14

154. The Victim Services Program of the Department of the Solicitor General, Province of New Brunswick, provides the following services, free of charge, to victims and witnesses in a criminal case:

(i) support for victims and witnesses;
(ii) information on how to prepare a victim impact statement; and
(iii) compensation for crime victims.

155. The *Victims Services Act,* R. S.N.B. 1973, c. V-2.1, establishes the Victims Services Committee, which receives applications and submissions from any person, organization or institution relating to

(i) the needs and concerns of victims;
(ii) the promotion and delivery of victims services;
(iii) research into victims services, needs and concerns;
(iv) the distribution of information respecting victims services, needs and concerns; and
(v) the provision and funding for research and services relating to victims.

156. The Province of New Brunswick Department of the Solicitor General prepares annual reports on *Compensation for Victims of Crime Act,* R. S.N.B. 1973, c. C-14.

Article 16

157. In 1992, sexual orientation was added grounds for discrimination in the *Human Rights Act,* R. S.N.B. 1973, c. H- 11.

Appendix NB-1

Details and Dispositions of Citizen's Complaints Against New Brunswick Police, 1991-1996. From the New Brunswick Police Commission's Annual Reports, 1992-1996.

Appendix NB-2

Complaints Against the New Brunswick RCMP, 1992-1997. From the RCNP Public Complaints Commission's 1996-1997 Annual Report.

Table 1: Numbers of Complaints Against New Brunswick RCMP, 1992-1997
Table 2: Categories of Allegations Found in Complaints Against the New Brunswick RCMP Received by the Commission, 1996-1997

Documentation

The following documents were submitted to the United Nations with the present report:

Custody and Detention of Young Persons Act, R. S.N.B. 1973, c. C-40

Regulation 92-71 under the *Custody and Detention of Young Persons Act*

Policing Arrangements in New Brunswick: 2000 and Beyond

Report of a Commission of Inquiry Established by Order-In-Council 92-1022

Review of Certain Practices in New Brunswick Correctional Institutions, Summary Report

Victims Services Act, R. S.N.B. 1973, c. V-2. 1

Regulation 96-81 under the *Victims Services Act*

Compensation for Victims of Crime Act Reports for 1992-93, 1993-94, 1994-95, and 1995-96

Appendix NB-1

Details and Dispositions of Citizens' Complaints Against the New Brunswick Police Force 1991-1996

Classification	1991-1992	1992-1993	1993-1994	1994-1995	1995-1996
Improper Conduct	8	18	14	14	19
Neglect of Duty	12	12	19	7	12
Abuse of Authority	10	10	16	12	25
Other	2	0	1	0	8
TOTAL	**32**	**40**	**50**	**33**	**64**

Disposition of Complaints	1991-1992	1992-1993	1993-1994	1994-1995	1995-1996
Founded	1	5	6	3	3
Unsubstantiated (Evidence to prove or disprove not produced)	1	8	4	2	3
Unfounded	24	21	32	26	39
Under Investigation	5	3	7	1	6
Withdrawn or Discontinued	1	2	1	1	4
Civil Matter	-	-	-	-	2
Closed	-	-	-	-	7
TOTAL	**32**	**40**	**50**	**33**	**64**

SOURCE: Annual Reports 1992-93, 1993-94, 1994-95 and 1995-96 of the New Brunswick Police Commission.

Appendix NB-2

Complaints Against the New Brunswick RCMP 1992-1997

Table 1:
Numbers of Complaints Against New Brunswick RCMP, 1992-1997

	1992-1993	1993-1994	1994-1995	1995-1996	1996-1997	**TOTAL**
Complaints made directly to the Commission	26	15	19	18	25	**103**
Complaints made to the RCMP	-	-	210	178	161	**549**
Complaints referred to the Commission for review	9	15	7	6	8	**45**
TOTAL	**35**	**30**	**236**	**202**	**194**	

SOURCE: Annual Report 1996-1997 of the RCMP Public Complaints Commission, Appendix A, tables 1, 2 and 6.

Table 2
Categories of Allegations Found in Complaints Against the New Brunswick RCMP Received by the Commission, 1996-1997

ALLEGATIONS	NUMBER OF COMPLAINTS
Improper attitude	3
Improper use of force	2
Improper use of firearms	0
Procedural irregularity	1
Driving irregularity	0
Neglect of duty	19
Statutory offences	0
Mishandling of property	1
Irregularity - Evidence	0
Oppressive conduct	16
Improper arrest	0
Improper search of persons or vehicles	0
Improper search of premises	2
Policy	2
Equipment	0
Service	5
Other	0
TOTAL	**51**

SOURCE: Annual Report 1996-1997 of the RCMP Public Complaints Commission Appendix A, Table 4.

QUEBEC

158. The Government of Quebec declared itself bound by the provisions of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with the adoption, on June 10, 1987, of decree no. 912-87, in compliance with its internal law.

159. Unless otherwise indicated, this report updates to December 31, 1995, the information contained in the Second Report of Canada on the application of this Convention.

Article 2

160. According to Quebec's *Charter of Human Rights and Freedoms,* R.S.Q., c. C-12, enacted by the National Assembly in 1975, "every human has a right to life, and to personal security, inviolability and freedom." Legislative and administrative measures have been taken on the basis of this fundamental provision, to ensure compliance with the Convention.

161. Under the *Act respecting police organization,* R.S.Q., c. O-8.1, all special constables and police officers in Quebec are subject to the same rules of conduct, as prescribed by the Quebec police code of ethics. Two separate independent tribunals - the Police Ethics Commissioner and the Police Ethics Committee - monitor compliance with this code and handle public complaints against police conduct, each at own level.

162. The *Act respecting health services and social services,* R.S.Q., c. S-5, provides for a series of measures to protect the rights of users in dealings with health care and social services institutions in Quebec. Institutions are required to establish code of ethics and users committees. In addition, a complaint processing mechanism has been set up at the local, regional and provincial levels. The overall purpose is to ensure respect for human rights and increased humanization of relations between persons requiring services and the overall system that provides them.

Article 3

163. Cases of deportation, extradition and rejection of persons in detention facilities are reviewed and federal authorities decide their fate.

Article 4

164. The *Criminal Code* (section 269.1) prohibits torture of a citizen by a public official. Only one citizen invoked this provision during the period covered. This person filed accusations against three peace officers. The judicial process provided for in such cases resulted in the acquittal of the three defendants.

Article 10

165. New police officers are trained at the *Institut de police*. During their training, all trainees are evaluated on their skills and on their ability to put their professional knowledge into practice while respecting fundamental human rights at all stages of police operations - arrest, detention, incarceration, search and investigation. Training on the use of force is based on the practical and technical aspects of police work in a legislative and regulatory context, in keeping with the legal guarantees enshrined in the Canadian and Quebec charters of rights and freedoms.

166. Over the past few years, training sessions on the physical intervention used by correctional officers have been held in order to minimize the risk of injuries during altercations. All provincial institutions have taken advantage of this training and new correctional officers have received several hours of training centred on respect for human rights and freedoms.

167. The Department of Education also makes a significant contribution to the training of various employees. The following information is current to May 31, 1996.

168. **University and scientific affairs sector** - In light of the principle that universities are independently responsible for course content and modifications, the Department of Education sent a letter to universities involved in medical training, informing them of the Quebec Government's adherence to the Convention and its impact on their training programs. The Department thus asked institutions to consider Quebec's commitments in this regard.

169. **College vocational and technical training sector** - Training programs for nursing staff and police officers include the following objectives:

- **Police technology**: To identify the roles and responsibilities of the police within the Quebec legal system; to apply knowledge related to police organizations, ethics and discipline; to exercise police authority and duties in criminal cases and in relation to Quebec legislation and municipal by-laws; and to apply intervention techniques with persons in crisis situations.

- **Health, assistance and nursing care**: To identify one's role in relation to the profession and training efforts; and to acquire knowledge on legislation and professional ethics.

- **Nursing**: To show respect for human dignity and value in accordance with principles of ethics and conduct; to carry out one's professional duties in compliance with the requirements of an explicit concept of nursing; to exercise the nursing profession, ensuring respect for care, in accordance with one's professional responsibilities; and to show social commitment in terms of one's professional skills.

170. To achieve the training objectives, students must become familiar with certain legislation and regulations that determine their rights and duties and establish the parameters of their field of professional practice. For example, students preparing to become nurses or nursing assistants

must become familiar with the content of the *Code of ethics of nursing assistants,* R.S.Q., c. C-26, r.111, particularly with the duties and obligations of nurses and nursing assistants toward the public, the patients and the profession, and discuss the consequences of failing to fulfil the duties and obligations contained in the code of ethics as well as means of protecting oneself against potential lawsuits.

171. At the end of their training period, graduates must meet either the requirements of the *By-law respecting standards of the Sûreté du Québec and municipal police forces for the hiring of constables and cadets*, R.S.Q., c. P.-13, r.14, enacted under the *Police Act*, R.S.Q., c. P-13, or the requirements of Quebec's *Nurses Act*, R.S.Q., c. I-8, to obtain their licence.

172. Finally, the training plans for all health sector programs are developed in co-operation with the Department of Health and Social Services. Respect for human rights and conditions of professional practice are included in the training plans.

Article 11

173. With regard to policing, in addition to enforcing the policy of having another police force investigate any death occurring during a police operation, the Department of Public Security has implemented various measures, in terms of custody and treatment, to ensure that the rights of persons arrested, detained or incarcerated are respected:

- Preparation of a manual of police practices, ensuring compliance with the *Charter of Human Rights and Freedoms* and promoting standardization of police practices throughout Quebec. Among other things, this manual outlines guidelines or standards on the use of force, arrests and detention and investigation techniques;

- Creation of *L'informateur juridique*, a specialized journal which reviews recently adopted police practices, provides information on the various legislative changes and discusses sociological trends and social problems affecting police work;

- Introduction of news bulletins to police chiefs to provide a rapid, flexible communication tool, with objectives similar to those of *L'informateur juridique* and the Manual of Police Practices, but on an ad hoc basis;

- Participation of the security and prevention branch and police forces in various working groups on such topics as implementation by police organizations of concrete protection and security measures for victims in cases of spousal abuse; evaluation and review of police physical intervention techniques; screening of volunteers to prevent persons at risk from being in a position to sexually assault children or other vulnerable persons; monitoring of *Institut de police* training programs; and finally, private security to ensure, among other things, that this industry's procedures comply with the *Charter of Human Rights and Freedoms*.

174. With regard to corrections, in 1994-95, 91,553 entries were registered in the detention facilities system. Of these, 65,338 were admissions and 26,215 were transfers. Thus, the average daily registered population was 6,096 persons, or 1,268 accused and 4,828 inmates, including an average of 3,553 persons on temporary absence from the detention centre.

175. The correctional system has adopted a new approach designed to reduce the number of admissions to detention facilities by using other measures, such as suspended sentences, driver's licence suspensions and increased reliance on community service and work options. Incarceration has thus truly become a measure of last resort. Amendments to the *Code of Penal Procedure*, R.S.Q., c. C-25.1, and the *Criminal Code* have facilitated the implementation of this new practice, which is combined with a desire to meet the specific needs of the regions. To this end, regional branches have been set up to provide services tailored to the particular clientele in each region in Quebec.

176. Finally, decisions made by correctional authorities are closely monitored by independent organizations such as the *Protecteur du citoyen* [ombudsman] and the *Commission des droits de la personne* [human rights commission], which became the *Commission des droits de la personne et des droits de la jeunesse* [human rights and youth rights commission] on November 29, 1995. Inmates' access to them is strictly confidential. In addition, these two agencies monitor the management of Quebec detention facilities closely and intervene frequently. For example, in conjunction with Correctional Services, the *Protecteur du citoyen* helped prepare a directive, soon to be in force, on the use of constraint and restraint measures.

Articles 13 and 14

177. With regard to the work of police officers, any citizen who feels his or her rights have been infringed or that he or she has been improperly treated may file a complaint with the Police Ethics Commissioner. The procedure followed in such cases and the powers of the Police Ethics Commissioner and the Police Ethics Committee were outlined in the Second Report of Canada, paragraphs 87 to 90.

178. The office of the Police Ethics Commissioner receives an average of 1,100 complaints annually, implicating some 1,500 police officers, or about 10 percent of the total special constable and police ranks.

179. Since the Commissioner does not have the authority to rule and decide on the validity of the complaints he receives, a role assigned to the Police Ethics Committee, he exercises his authority in terms of the powers vested in him, as shown by the 1995-96 data. The Commissioner refused to investigate 266 complaints (28 percent), attempted to reconcile the parties in 130 cases (15 percent), and decided to investigate 605 cases (63 percent). Following investigation, the Commissioner decided to summon officers to appear before the Committee in 207 cases involving 289 police officers.

180. In compliance with the system for supervising and monitoring police duties, the Commissioner laid charges of 264 counts of excessive use of force by police officers under a specific provision in the police code of ethics. After hearing the parties, the Police Ethics Committee recognized excessive use in the case of 40 police officers.

181. Persons who claim to have been mistreated by Correctional Services may file a complaint before the civil or criminal courts and, if the evidence so justifies, be compensated for the harm suffered or even obtain a conviction against the attacker. Thus far, no proceedings have been instituted against any detention facility employees for torture or other cruel, inhuman or degrading acts.

Article 16

182. During its 139th session, the Committee Against Torture asked for details to be provided in Canada's next report regarding the issue of corporal punishment in Canada, particularly with regard to children.

183. The *Criminal Code* (section 43) authorizes persons facing criminal charges to claim in defence that, as a schoolteacher or parent, they used reasonable force to correct a pupil or child.

184. During the period under review, the Quebec Court of Appeal on two occasions ruled on the impact of this section on the decisions of *Fonder v. R.* on February 9, 1993, and *Bouillon v. R.* on April 17, 1993. In both cases, respondents appeals were allowed and they were granted the defence provided for in section 43. The cases involved two teachers accused of assault (Bouillon) and aggravated assault (Fonder). The Court of Appeal allowed these defences, pointing out that it was a question of benign assault, with no real criminal intent, designed to enable a teacher to regain control in a classroom.

185. It should be noted that the adoption of Quebec's new civil code in late 1991 put an end to the former rule of law whereby parents had the right to correct children with moderation and within reason. The general rule now relates to parents' rights and duties of custody, supervision and education of their children.

ONTARIO

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186. The information provided here is an update to Canada's Second Report on the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. It covers the period from January 1, 1992 to May 31, 1996.

187. Torture is a criminal offence and Ontario is dedicated to strong and effective law enforcement.

188. Ontario's correctional system is undergoing extensive change that will fundamentally alter the way in which services are delivered to inmates. These changes have been implemented with a focus on re-balancing the corrections system to reflect the rights of victims and to institute meaningful consequences for offenders. To this end, the government is currently in the process of replacing its aging adult facilities with modern, more humane institutions. As well, a strict discipline project, aimed at reducing recidivism and specifically tailored to 16 and 17 year old male repeat offenders, is currently underway. A structured program regimen emphasizing work skills and education has also been established throughout the young offender system.

189. Ontario is committed to ensuring that public safety is the highest priority in inmate release decisions. Strengthened parole policies, vigorous enforcement of the terms and conditions of parole, and a reduction in the parole grant rate have been effective changes in maintaining public security. Change within the corrections system is also being delivered through a large capitol renewal project that will eliminate economic inefficiencies and halt the structural deterioration of the province's correctional facilities.

Article 1

Ontario Human Rights Commission

190. On May 21, 1996, the Ontario Human Rights Commission released its policy on Female Genital Mutilation (FGM). It is the Commission's position that the practice of FGM is contrary to public policy in Ontario because it offends the inherent dignity of women and girls and infringes their rights as set out in the Ontario *Human Rights Code*. The Commission will, therefore, accept, investigate, and make a determination on complaints involving female genital mutilation filed by victims of the practice or by their legal guardians.

Article 2

Ministry of the Solicitor General and Ministry of Correctional Services

191. To prevent acts of mistreatment in Ontario's correctional facilities, the Ministry monitors its compliance with relevant statutes, regulations, policies, procedures, training and standards.

Article 10

Ministry of Community and Social Services

192. All staff are trained in the requirements pertaining to the use of force on clients, as set out in the Ministry's Young Offender Services Manual. These requirements cover the following key areas:

- use of physical or mechanical restraints;
- use of secure isolation;

- maintenance of discipline;
- control of contraband;
- use of searches;
- apprehension of youth; and
- use of punishment.

Ministry of the Solicitor General and Ministry of Correctional Services

193. Supervision of the detention and release of inmates, parolees, probationers and young offenders is designed to effect a change in the attitudes of those individuals in order to prevent re-offending. All correctional officers receive basic and advanced training to enable them to appropriately carry out their tasks. This training includes education and information regarding the prohibition against mistreatment in a correctional setting. All correctional staff receive education and training in relevant statutes and regulations, security protocols, principles of ethics, the proper use of force and the effective use of non-physical intervention and communications.

Article 11

Ministry of Community and Social Services

194. All youth in the Ministry of Community and Social Services young offender facilities come under the jurisdiction of the *Child and Family Services Act*, which sets out rights and protections for children, including:

- the right to speak in private and receive visits from his or her solicitor or another person representing the child;
- controls on the use of secure isolation; and
- regular advice to children regarding their rights.

195. Compliance review mechanisms ensure that standards set out in the Young Offender Services Manual regarding rights, complaint procedures, serious occurrence reports, child abuse, use of punishment, searches, mechanical restraints and mandatory criminal reference checks for staff, are adhered to.

Ministry of the Solicitor General and Ministry of Correctional Services

196. Consistent with the purpose of Article 11, to prevent cases of mistreatment of persons in custody, the Ministry has established standards for correctional staff, facilities and inmates. These include ethical standards for correctional staff; policies regarding conditions of confinement (e.g., accommodation, programs and health care); and principles governing confinement (inmate rights and privileges, responsibilities, and penalties for non-compliance).

197. In setting standards for inmates, the Ministry emphasizes supervision that will lead to a change in behaviour. The Ministry has recently begun a pilot project, a strict discipline program for young offenders. The program emphasizes work/study habits and minimizes free/recreational time to help young offenders understand their responsibilities to society as a whole. Ontario continues to call upon the federal government to make substantive amendments to the *Young Offenders Act* to provide for appropriate courses of action that match the crimes committed.

Articles 12 & 13

Ministry of Community and Social Services

198. The Ministry's serious occurrence procedures require that all serious occurrences involving children must be reported to the Ministry within 24 hours, including serious injuries and allegations of abuse.

Ministry of the Solicitor General and Ministry of Correctional Services

199. There are mechanisms in place to ensure that persons within the Ministry's area of jurisdiction have the right and means to complain about physical abuse by Ministry employees, and to ensure a prompt and impartial investigation into reasonable grounds for or allegations of mistreatment by such persons.

200. All correspondence, with the exception of letters to or from the Office of the Ombudsman, the Information and Privacy Commissioner and the Correctional Investigator of Canada may be examined for contraband or inappropriate content. However, inmate correspondence is examined only by specially designated personnel on a random basis to check for information or items that might constitute a breach of law or be prejudicial to the security of the institution or to the best interests of inmates or other persons. Correspondence that is examined is then forwarded without delay and without change.

201. Investigations by the Ombudsman and by Human Rights Commissions are independent.

Article 16

Ministry of Community and Social Services

202. Under the *Child and Family Services Act*, every service provider is required to maintain an up-to-date written statement of policies and procedures that sets out methods of maintaining discipline and procedures governing punishment and isolation methods that may be used in the residence. No service provider is permitted to use deliberate harsh or degrading measures to humiliate a resident or undermine a resident's self-respect.

Ministry of the Solicitor General and Ministry of Correctional Services

203. To prevent acts of cruel, inhuman or degrading treatment or punishment in provincial correctional facilities, the Ministry monitors compliance with relevant statutes, regulations, policies and procedures, and training and standards regarding the proper use of force and the effective use of non-physical intervention and communications.

MANITOBA

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204. This report updates the information contained in the Second Report of Canada on the application of this Convention, with respect to developments in Manitoba up to August 1, 1996.

Article 2

205. Manitoba previously reported on the enactment of *The Corrections Act*, and the regulation making authority with respect to conduct and duties of officers and employees of correctional institutions, staff training and so forth. In 1992, a comprehensive regulation was enacted under this Act, *Regulation 227/92*, to provide a detailed and systematic process with respect to inmate discipline, including an appeal process for inmates. This regulatory process continues to be under ongoing review, with amendments being made as required.

Article 10

206. In our First Report, Manitoba referred to the role of the Manitoba Police Commission. Amendments to *The Provincial Police Act*, C.C.S.M. Cap P150 in 1992 that abolished the Police Commission. The Law Enforcement Branch, Manitoba Justice, performs its role with respect to liaising with, and advising, provincial police departments.. Its appellate functions under *The Provincial Police Act* have been transferred to a judge of the Provincial Court of Manitoba (see also Article 13).

207. Police in Manitoba do receive training with respect to the custody, interrogation or treatment of individuals subject to any form of arrest, detention or imprisonment, including in the context of the requirements of the *Canadian Charter of Rights and Freedoms*. The Winnipeg Police Service, the largest municipal force in the province (approximately 60 percent of Manitobans live in Winnipeg), provides extensive training in this regard, including standardized "justified force" training designed to ensure that its members can analyze the risks inherent in any law enforcement situation, and will apply no more than a reasonable amount of force under the circumstances. This training program is based, among other things, upon a continuous study of emerging case law on the subject. Not only is it a major component of each recruiting class, but every member of the Winnipeg Police Service is expected to engage in in-service training, and to qualify annually on the subject.

208. The Winnipeg Police Service makes places available in both the recruiting classes and in-service programming for members of smaller Manitoba municipal police forces (who would be unable to provide such programming otherwise). The Royal Canadian Mounted Police, under contract to handle most rural policing in Manitoba, is federally regulated. Its members receive extensive training along similar lines.

Article 13

209. *The Law Enforcement Review Act*, C.C.S.M. Cap L75, the role of which was described in Manitoba's First Report, was amended in 1992. It remains the primary vehicle by which members of the public may complain about conduct by all police officers in Manitoba (except the Royal Canadian Mounted Police, which has its own federally regulated public complaint process). The Act originally imposed as a standard of proof upon a complainant the requirement that the complaint be established "beyond a reasonable doubt." This was considered a major barrier to complainants' successfully bringing forward complaints about questionable police behaviour, so the standard of proof was lowered to "clear and convincing evidence that the [police officer] has committed the disciplinary default." This was in accordance with the standard used in some other provinces, and was recommended by the Aboriginal Justice Inquiry.

210. In addition, with the abolition of the Manitoba Police Commission, which had previously exercised an appellant function when the Law Enforcement Review Commissioner dismissed a complaint under s.13, this appellate function was transferred to a judge of the Provincial Court of Manitoba, sitting *persona designata*.

Article 14

211. There have been some minor administrative and policy changes, but no substantive ones, to *The Criminal Injuries Compensation Act*, C.C.S.M. Cap C305. Funding levels were slightly increased during the reporting period.

Article 16

212. Prior reports omitted reference to Manitoba's Child Abuse Registry. Where conduct prohibited by this Convention amounts to abuse as defined in *The Child and Family Services Act*, C.C.S.M. Cap. C80, the perpetrator may have his or her name entered on the Registry, which is then accessible to prospective employers, service providers and so forth. (Registration is automatic in the event of a conviction for a child abuse-related offence, and there is also a procedure for registration – subject to an appeal or review process – even without a conviction).

SASKATCHEWAN

213. This Report updates to August 1, 1996, the information contained in Canada's two previous reports on the Convention relative to Saskatchewan.

Article 10

Use of Force

214. The Corrections Division has developed a number of policies related to staff use of force in routine and extraordinary situations, and all institutional staff are trained and made fully aware of these policies. These policies have been developed to be fully compatible with the provisions of the *Criminal Code*. The policies include:

- Use of Force;
- Use of Force (Exceptional Measures);
- Management of Hostage/Crisis Situations in Provincial Correctional Facilities;
- Strip Search of Visitors;
- Use of Physical Restraints in Provincial Correctional Centres; and
- Inmate Discipline.

Article 13

Corrections

215. The policies of the Corrections Division provide offenders with a clear system for complaint review and resolution. These policies ensure that any allegation of staff assault/abuse of an offender is referred to the police for an independent and impartial investigation. As well, an offender may initiate an investigation of an alleged assault through direct complaint to the police. A further avenue of review is provided through the Provincial Ombudsman. The relevant policies are:

- Police Investigations of Assault Incidents in Correctional Facilities;
- Censorship Policy;
- Inmate Telephone Calls to the Provincial Ombudsman; and
- Internal Reviews of Inmate Complaints in Provincial Correctional Centres.

Young Offenders in Custody

216. In March 1991, the Department of Social Services established a policy limiting the use of physical restraints on youth in custody. The practice of one-to-one supervision of residents in

custodial facilities for additional supervisional support or security has reduced the use of physical confinement and restraint.

217. In 1994 and 1995, satellite programs for secure custody were developed to reduce the harmful effects of over-crowding in custodial facilities. In March 1996, community-based resources allowed the Department to discontinue its use of a substandard holding area in an open custody/family services facility.

218. To more appropriately assist youth in custody, a sex-offender treatment program was developed in one secure custody facility and in one community-based open custody facility, and community-based treatment group homes were developed for youth who would otherwise have been placed in a large centralized facility far from the youth's home community.

Children in the Care of the Province

219. Policy and procedures have been developed with the Saskatchewan Foster Families Association to investigate allegations of abuse or neglect involving foster children, who are in the care of the Minister of Social Services.

220. Systemic reviews of children's services will be done through a quality improvement function within the Department of Social Services. These reviews will include consultation with clients. As part of this direction, pamphlets are being developed for children and youth in the care of the Minister of Social Services and for youth residents in custodial facilities to inform them of their rights.

221. A child death policy has been developed to outline a department's response to handling situations in which children may have died while receiving services from the department.

222. The Office of the Children's Advocate was established in November 1994. The role of the Advocate is to protect the interests of children and youth receiving government services and requiring advocacy services. The Children's Advocate is independent of any government department and was appointed for a five-year term on the recommendation of the Legislative Assembly. The Office of the Children's Advocate is associated with the Office of the Ombudsman.

223. The mandate for the Advocate is to provide:

(a) a proactive response to individual children and youth in crisis;
(b) systemic reviews for children and youth receiving government services;
(c) a problem-solving approach emphasizing mediation and negotiation; and
(d) public education on the needs and well-being of children.

Article 16

Health Care

224. Section 6, Part II of the *Regulations* to *the Housing and Special Care Homes Act* requires that the appearance of residents in housing and special care homes show evidence of adequate care, including evidence of kind and considerate care. This section also states that restraints should only be used in an emergency and on the order of the physician.

225. A coordinated district-wide approach to responding to client complaints has been implemented to improve communication and collaboration among health district residents, health care providers, professional groups, boards, districts and Saskatchewan Health to improve service delivery at the district level. The quality of care coordinator in each district is to develop a consistent approach to: (a) receiving and responding to complaints; (b) assisting individuals and families with questions or concerns about health services in their districts; (c) assisting in matching individuals with appropriate services; and (d) using the experience of residents to improve the quality of services delivered in the district through development and implementation of policies, procedures and mechanisms to improve the district's health services.

ALBERTA

Part I

The role of the Provincial Ombudsman

226. Under the terms of the *Ombudsman Act*, the Ombudsman may investigate complaints of the administrative actions of provincial government departments and agencies. People in provincial correctional institutions are guaranteed access to the Ombudsman. People living in provincial institutions also have the right to complain to the Ombudsman, except patients in mental hospitals who may contact the Mental Health Patient Advocate. The Ombudsman may also initiate his own inquiries. With minor exceptions, he is guaranteed free access to all provincial government facilities and files. Upon completion of an investigation, the Ombudsman may recommend changes or, if unable to affect change, make his concerns public. Police are not directly under the Ombudsman's jurisdiction, but the disposition of complaints about police operating under provincial authority may be appealed to the Law Enforcement Review Board. The Ombudsman may investigate the actions of the Law Enforcement Review Board.

Articles 10 through 16

227. Police services in Alberta and the Staff College of the Alberta Government provide training for police officers and special constables that clearly defines the limits of force which can be used by an officer. Most of the police services in Alberta (Edmonton, Calgary, Medicine

Hat, Lethbridge, and the Aboriginal Police Services) are trained using the Police S.A.F.E.T.Y. System and its Use of Force Model, which identifies the level of force to be used against a given level of aggression. Under this system, new recruits receive 50 hours of training and refresher training is provided as required by policy, ensuring that new control techniques (such as pepper spray) are used properly and appropriately. Training based on the Criminal Code of Canada and the *Canadian Charter of Rights and Freedoms* is also provided. Each police or special constable service is required to have policies and procedures in place that govern their employees' behaviors. It is also the responsibility of these employers to monitor their staff.

228. Persons who allege to be victims of police may complain to the police service and may also appeal the disposition of their complaint at that level to the Law Enforcement Review Board, an independent quasi-judicial body established under the *Alberta Police Act*.

229. The Correctional Services Division of Alberta Justice has a considerable number of policies that reinforce the need to treat incarcerated offenders equitably. Policies include appeal mechanisms to correctional and third-party officials, and reviews of staff decisions by senior correctional staff. Training initiatives are predicated on policy directives. All new and incumbent staff receive complete training on all aspects of policy, including approved security and disciplinary methods, offender management techniques, conflict resolution and protections available to offenders.

230. The provisions of the *Mental Health Act* (1990) and the *Public Health Act* as reported by Alberta in the Second Report on this Convention remain in effect.

231. Article 12 of the Convention indicates that Canada must ensure that competent authorities proceed to prompt and partial investigation wherever there are reasonable grounds to believe that an act of torture has been committed in Canada. In the province of Alberta, the *Fatality Inquiries Act* requires that a Medical Examiner investigate any death resulting from a violent act, or any death thought to result from negligence. This investigation includes determining the identity of the decedent, place of death, time of death, medical cause of death, and manner of death (i.e., natural, homicide, suicide, or accident). Although the Medical Examiner's Office falls under the jurisdiction of the Department of Justice, the Medical Examiner's final conclusions in any case are solely those of the Medical Examiner, and are made independently of the Government and police. Therefore, any death alleged to have resulted from torture and other cruel inhuman or degrading treatment or punishment would be investigated by the Medical Examiner's Office, and a report prepared as to the cause and manner of death. Furthermore, the provisions of the *Fatality Inquiries Act* stipulate that all deaths in custody and those deaths recommended by the Fatality Review Board, must go to public inquiry wherein the circumstances surrounding a death are made public before a provincial court judge. The judge may make recommendations for preventing similar deaths in the future. Under the Medical Examiner system, any death alleged to have been the result of torture or other cruel inhuman or degrading treatment or punishment would go to public inquiry.

232. The Crimes Compensation Board was established by the government of Alberta to provide help for victims of violent crimes. The Board is made up of three members appointed by the Government of Alberta. The Board reviews applications for compensation and holds hearings with applicants. Compensation may be made for injuries suffered directly from a violent crime, while making or assisting in an arrest, while preventing the commission of a crime, or for the dependants of anyone killed under the afore-mentioned circumstances. The type of claims allowed: wages or salary lost because of injury; medical and dental expenses; damaged clothing or eyeglasses; funeral expenses; maintenance of children born as the result of a rape; and transportation expenses and loss of earnings as a result of attendance at a Board hearing. Property damage may also be covered if it is caused by a peace officer while preventing an offence or arresting a suspect.

233. Neither the Law Enforcement Review Board nor the Crimes Compensation Board has received any complaints regarding the use of torture or other cruel, inhuman or degrading treatment or punishment.

234. Effective September 1, 1991, the use of physical discipline in Alberta's foster homes was severely limited. All foster parents received training in the use of alternative forms of child management. Effective January 1, 1993, the use of physical discipline in Alberta's foster homes was prohibited. New foster parent applicants are not approved unless they agree to comply with the "no physical discipline" policy. Training in the use of alternative forms of child management continues to be mandatory.

Part II

Education

235. Section 15 of the *School Act* states: "A principal of a school must (e) maintain order and discipline in the school and on the school grounds and during activities sponsored or approved by the board;"

236. Section 13 of the same Act reads: "A teacher while providing instruction or supervision must (f) maintain, under the direction of the principal, order and discipline among the students while they are in the school or on the school grounds and while they are attending or participating in activities sponsored or approved by the board;"

237. The use of corporal punishment to correct student behavior is set by school board policy. The majority of Alberta school boards have banned corporal punishment in their policies.

238. Section 43 of the *Criminal Code* protects persons in authority and allows the correction of a child by force. This section provides teachers with the ability to use force by way of correction. The section states "every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable in the circumstances."

239. Amendments to the *School Act* (May 1994) increased the power of schools to expel or suspend a student for a variety of specific reasons or for any other reason that the teacher, the principal or the school board considers appropriate. The amendment includes specific processes that recognize the right of the student to fair and just treatment, including the right of appeal to the school board and to the Minister.

240. Alberta Education has provided leadership on strategies and projects to improve student conduct in schools, reduce violence and promote the peaceful resolution of conflict in schools and communities. Schools help all students to learn and handle conflict and anger in non-violent ways and prepare for the responsibilities of citizenship.

Health

241. A Research Report, entitled *The Case for Culturally Sensitive Health Care: A Comparative Study of Health Beliefs Related to Culture in Six North-East Calgary Communities*, provides, for the first time, a quantitative and qualitative look at the need for understanding and including cultural beliefs in the relationship between health practitioners and patients/clients and the extend of this need. This study of nearly 400 Calgary families and a parallel study of 45 health practitioners found that cultural factors are critical in the care of one in three patients, and suggests ways that practitioners might develop strategies to include culturally sensitive health care in their training and professional development.

242. A process for managing diversity in organizational change was initiated in partnership with Calgary Health Services (CHS) in 1992. The organizational assessment, *Keys to Integrating Cultural Diversity with Public Health: An Analysis of Barriers*, was completed in early 1994. A strategic implementation plan was approved in April 1994. A permanent Managing Diversity Committee was established. In March of 1996, the Calgary Regional Health Authority approved the diversity policies that were approved by the Calgary Board of Health and will begin to implement them across all sections of the health authority.

243. In continuing partnership, CHS and the Alberta Multiculturalism Commission (AMC) have developed and piloted a managing diversity simulation training program, *Good Water*, targeting the senior directors and managers of Calgary Health Services and the Calgary Regional Health Authority. This simulation training tool will be made available through the Commission for use by other health authorities.

244. In conjunction with AMC, the University of Alberta Faculty of Rehabilitation Medicine has developed *When Two Worlds Join: Intercultural Skills Training for Field Supervisors* for clinical instructors who supervise students in health care institutions across the province. This initiative reaches 400 students and instructors per year. A training program, *Cultures in Health*, has developed from this work and been delivered to health care institutions across Alberta. The faculty is on the verge of approving a required course for all occupational and physiotherapy students that will provide them with skills needed to deal more effectively with cultural diversity.

The materials collected for this course have been shared with AMC and are available for other clients' use. A national conference for occupational therapists will include a workshop on diversity.

245. The University of Alberta Faculty of Rehabilitation Medicine, also in conjunction with AMC, has taken a leadership role in a provincial Culture-In-Health Cohort since 1992. In 1994, over 25 culture-in-health initiatives from across Alberta have participated in the network.

246. In 1990, the Edmonton Board of Health (EBH) helped to initiate a project to establish a language bank of interpreters and translators to be utilized by many social services agencies. EBH recognizes the cost benefit of providing translators and interpreters and has allocated funds for these services into their budget. AMC helped initiate a project in which EBH consulted with the ethnocultural community to determine their health needs and to learn how the community could better access existing health services. AMC, Grant MacEwan Community College and EBH jointly developed a childbirth project which provided women from the ethnocultural community with information about Canadian health care systems. These volunteers help EBH provide better pre and post natal care to the community. These customer-focused initiatives positioned EBH well to face changes in the heath sector. Diversity has been incorporated into their organizational change process.

247. The Bethany Care Society, Calgary, with AMC support, initiated a process to value diversity and conducted a needs assessment study in March 1994. Bethany is currently implementing the recommendations of the study.

248. The Southern Occupational Health Resource Service, Department of Community Health Science, University of Calgary, has received funding from the AMC (1994-95) for a partnership project with the Calgary Chinese Community Services Association to provide occupational health education within small Calgary Chinese Community businesses. This community project is serving as a model for this type of cooperative community education work within the ethnocultural communities.

249. In collaboration with AMC, the University of Alberta Faculty of Rehabilitation Medicine has led an Alberta provincial network of culture-in-health initiatives since 1992. As of December 1994, more than 25 initiatives across Alberta were linked through the network.

250. Consultation has been provided to the Alberta Alcohol and Drug Abuse Committee's Community Education Services, the Canadian Cancer Foundation in Edmonton and the Children's Health Centre of Northern Alberta to assist in identifying ways to reach out and improve services to ethnocultural communities. Through this consultation, the Alberta Alcohol and Drug Abuse Committee (AADAC) learned that this organization is sometimes misunderstood by ethnic communities. AADAC is developing "Cultural Sensitivity" workshops for its employees and the Children's Health Centre has included a multicultural dimension in its October 1994 Family-Centred Care Conference. During their revisions to the Peer Support Program, AADAC received AMC assistance to ensure that materials dealt appropriately with

diversity. The teacher's resource and program training modules have been revised to introduce the concept of diversity.

251. The University of Lethbridge School of Nursing, with AMC support, has developed video tools to help health professionals work with culturally and linguistically different clients. In 1994, a video and curriculum guide about working with Hispanic patients was produced.

252. Since 1991, the Task Force on Cross-Cultural Psychology of the Psychologists Association of Alberta has examined professional practice issues and explored changes in its members code of ethics. The group has been working to include course(s) in cross-cultural counselling as part of post-secondary training.

253. The Alberta Association of Social Workers (AASW) 1995 Annual Conference focused on intercultural and organizational change initiatives related to diversity. AMC helped design the opening plenary session that compared traditional healing to that of four different counselling and mental health professions.

Justice

254. The Correctional Services Division of Alberta Justice concentrates most cultural training efforts on Aboriginal awareness.

255. Correctional staff receive awareness training in Aboriginal culture from an Aboriginal trainer, and offenders are encouraged to maintain or cultivate links with their Aboriginal heritage. Major correctional centres retain Aboriginal Elders to assist Aboriginal offenders with traditional ceremonies, such as sweat lodges, sweet grass smudging, ceremonial fasting and pow wows. They also advise offender self-help groups formed under the *Societies Act* and known as Native Brotherhood/Sisterhood groups. Correctional centre health care providers may approve access to Aboriginal healing practices.

256. Aboriginal organizations, under contract to the Department of Justice, perform community supervision of offenders and manage one minimum security correctional centre. Senior supervisors have received a presentation on cultural diversity from a representative of the Department of Community Development. Spiritual and dietary services for the diverse needs of various cultural groups can be accommodated.

BRITISH COLUMBIA

Introduction: the Role of Office of the Provincial Ombudsman

257. In addition to the specific measures taken to implement this convention, which are described in the following paragraphs, the mandate of the Office of the Provincial Ombudsman addresses the intent of the Convention in a comprehensive way. Under the terms of the *Ombudsman Act*, the Ombudsman can investigate complaints by members of the public against public officials and agencies to determine if the public is being treated fairly.

258. The Office of the Ombudsman has a set of Guiding Principles, a copy of which is provided with these materials as a reference. Also included are reports submitted by the office of the Ombudsman during the reporting period.

Article 2: Legislative or Other Measures and Article 11: Rules of Practice for Interrogations, Custody and Treatment

259. The Attorney General is responsible for enforcement of provincial statutes and prosecution of offenses under the *Criminal Code* of Canada. No provision in B.C. law or policy may be invoked as a justification for torture or other inhumane treatment.

260. For police officers, standards of conduct are regulated by the *Police Act*, R.S.B.C. 1979, and by regulation entitled the *Discipline Code* (Reg 330/75, as amended by B.C. Reg. 142/89 (see Appendix BC-1). The B.C. *Discipline Code* delineates 14 categories of "misconduct" including, but not limited to, discreditable conduct, neglect of duty, deceit, abuse of authority, improper use of firearms and criminal conduct. Sanctions range from a written reprimand to a recommendation to the police board for dismissal. Relevant Provincial Policing Standards and the Police Code of Ethics are included in the appendix to this report. Accountability under these regulations is ensured through the operations of independent municipal Police Boards and the B.C. Police Commission.

261. In British Columbia, custody of prisoners and inmates is the responsibility of the Attorney General. Court Services Branch, Sheriffs' Services, provides in-court custody and prisoner escort while the Corrections Branch provides care, custody and control of remanded and sentenced inmates.

262. Correctional Officers derive the authority to use force in their capacity as peace officers pursuant to the *Criminal Code of Canada* as well as to the B.C. *Correctional Centre Rules and Regulations*. Reasonable force may be used only to prevent the commission or continuation of an offense; maintain or restore order; apprehend an offender, or provide assistance to another officer in any of the above conditions. Corrections Branch policies further define the situations and circumstances in which force may be applied. The guiding principle is that the force used

shall not exceed that which is necessary to effect control and it shall be discontinued at the earliest reasonable opportunity.

Article 3: Return to Another State

263. While immigration and refugee determination are federal responsibilities, on April 1, 1991, the British Columbia Court of Appeals upheld the B.C. Supreme Court decision in *Gonzeles-Davis v. Legal Services Society*, which said that the Legal Services Society of British Columbia is required to provide counsel for individuals facing an immigration proceeding that may result in removal from Canada. Although statistics are not kept on the number of alleged victims of torture among refugees facing deportation, there were 1,541 Convention refugee determination cases represented in fiscal year 1995/96. (Statistics are not available for previous years.) The Legal Services Society reports that allegations of torture, or fear of torture, are not uncommon among refugee claimants.

Articles 6 and 7: Custody as Is Necessary for Prosecution or Extradition

264. The Corrections Branch, Ministry of Attorney General, only admits to custody those persons who have appeared before the courts and have been bound by a committal order issued according to law. The decision to prosecute or extradite remains with the office of the Crown counsel.

Article 10: Training of Public Officials

265. Specialized training for physicians in the treatment of victims of torture is not funded directly by the government. Physician training and upgrading is the responsibility of the University of British Columbia Faculty of Medicine and Continuing Medical Education Department. The Faculty of Medicine has recently established a Cross Cultural Psychiatry Program. Training sessions, open to all interested care providers, have included discussion of torture victims. Some health service agencies, such as the REACH clinic in Vancouver, draw on the expertise of the Vancouver Association for the Survivors of Torture (VAST) to help them develop skills in serving this population.

266. Police and correctional officer training is delivered primarily through the Justice Institute of British Columbia through the operations of the Police Academy and the Corrections Academy. Recruit training of municipal police officers at the Police Academy emphasizes those sections of the *Canadian Charter of Rights and Freedoms* concerned with the legal rights or the various protections afforded to those persons in contact with the Canadian criminal justice system. These legal rights, together with Charter sections that address equality rights and remedies available for the infringement of Charter rights, receive significant review and analysis throughout the recruit training process. The training also defines and cultivates core communication skills and demonstrates, through its programming, how to use these skills effectively in many kinds of difficult interviewing situations.

267. In addition to a recruit training program that emphasizes the significance of the fundamental rights of citizens, additional protections are provided for those detained by the police through the use of videotaping equipment. Many municipal police departments have video equipment available to record interviews of suspects in a criminal investigation. The use of the video camera in the interrogation setting is considered of value to both the police and the suspect in that it records with certainty the questioning as it took place. Additional details concerning police use of force training are included in Appendix BC-1.

Article 12: Prompt and Impartial Investigations and Article 13: Right to Complain

268. With respect to complaints against police, the *Police Act*, proclaimed in 1989, provides for a public complaint process and the appointment of a Complaint Commissioner who is responsible for monitoring the handling of complaints by police departments and for acting in the public interest to ensure that complaints are handled in a manner specified by the Act. Specifically, the Complaint Commissioner is responsible for receiving and recording complaints, advising and assisting complainants, officers complained against, chiefs of police and police boards regarding complaints. On a regular basis, the Complaint Commissioner's office inspects the police department's systems for handling complaints. See Appendix BC-1 for additional details.

269. Inmates held in provincial correctional centres have rights of complaint established under the *Correctional Centre Rules and Regulations*. Section 39, establishes a consultation process whereby an inmate may request to see the centre Director or other officer to address a concern. The Director or officer must meet with the inmate and must then advise the inmate of the decision regarding the issue or concern. Section 40 establishes the process for inmates to file written complaints to an officer, centre Director, District Director or Regional Director. The person receiving the complaint must investigate the complaint and respond back to the inmate within seven days. Section 41 establishes a process whereby inmates may make a written complaint or grievance to the Director of the Investigation, Inspection and Standards Office (II&SO). All such complaints must receive a written response. See Appendix BC-1 for additional details.

Article 16: Other Acts of Cruel, Inhuman or Degrading Treatment

270. The new *Child, Family and Community Service Act*, which came into effect on January 29, 1996, expands the definition of children in need of protection and includes physical harm, emotional harm, sexual abuse and sexual exploitation. Under the Act, acts of cruel, inhuman or degrading treatment or punishment towards a child are considered to be child abuse regardless of the abuser's relationship to the child. Anyone, including a public official or a person acting in an official capacity who abuses a child, must be reported under section 14 of the Act.

271. Every person has a duty to report to the Director whenever there is reason to believe that a child needs protection (s. 14). Under section 16 of the Act, the Director makes an immediate assessment of every report regarding a child's need for protection. Following the assessment, the Director may offer support services to the child or family, refer the child and family to a community agency, or conduct an investigation to determine whether the child needs protection.

Issues from Previous Reports to the UN

Complaint by Two Immigrants of Chinese Origin against Members of the Vancouver Emergency Response Team

272. On February 18, 1992, a complaint was filed by two citizens under the *Citizen Complaint Procedures* of the *Police Act* regarding alleged excessive use of force by members of the Vancouver Police Department Emergency Response Team. The complaint arose out of an incident on February 9, 1992, when ERT members, acting on information that the occupants of a house were in possession of firearms and drugs, obtained a search warrant and entered the residence. Subsequently, ERT members were videotaped outside the residence with one of the occupants face down on the ground. The complainant was holding his hands against his chest and would not release them for handcuffing. He was struck once on the right side, causing him to release his right arm. He was then struck on the left side and he released his other arm, at which time he was handcuffed. Once members had gained control of his arms, no further force was used.

273. According to the Vancouver Police Department, both blows were struck in accordance with diversionary tactics that were deemed to be necessary under the circumstances. According to police, ERT members had experience with hidden weapons in similar situations.

274. The Vancouver Police Department investigated the complaint, and forwarded the report to the Regional Crown Counsel who concluded that no criminal charges against the ERT members were warranted. Two other Crown Counsels and an outside counsel in private practice also reviewed the matter and agreed with the original decision that charges were not justified.

275. Since the police officers had carried out their duties in accordance with training and departmental policy, the Vancouver Police Department concluded that no charges would be forthcoming under the *Police Act*.

276. Pursuant to section 50(2) of the *Police Act*, an Inspector from the Victoria Police Department and the Complaint Commissioner reviewed the investigation file and concluded that a thorough investigation had been conducted. They also concurred that no disciplinary charges should be laid. The Complaint Commissioner confirmed that the Police Department had complied with the *Citizen Complaint Procedures* under the Act.

277. The complainants were advised of the outcome of the investigation and of their right to request a public inquiry to have the matter reviewed in a meeting with officials from the police

department, Crown Counsel, the British Columbia Civil Liberties Association and the office of the Complaint Commissioner. Neither of the complainants requested a public inquiry. A civil law suit against the City of Vancouver was settled without prejudice.

278. As a result of this incident, on May 27, 1996, the Police Commission announced that it would review Emergency Response Teams under its authority to conduct inquiries and investigations. However, on June 2, 1996, Mr. Justice W.T. Oppal was appointed to conduct an independent inquiry into all aspects of policing, including ERT procedures. The Commission's proposed study was subsumed into the Commission of Inquiry mandate. The above information was communicated to the Secretary General of the International Secretariat, Amnesty International.

British Columbia Council of Human Rights

279. The *British Columbia Human Rights Act* prohibits discrimination in employment, housing, public services and publications on the grounds of race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation. In addition, employers cannot discriminate because of age (19-64), political belief or unrelated criminal charges or convictions, and landlords cannot discriminate because of a person's source of income. Acts of cruel, inhuman or degrading treatment or punishment that do not amount to torture could be encompassed by the prohibitions contained in this Act. For example, complaints concerning harassment or other terms and conditions of employment may involve cruel, inhuman or degrading treatment or punishment. Canadian jurisprudence has made it clear that intent to discriminate is not required for conduct to contravene the *Human Rights Act*. The Act applies not only to private citizens but to provincial public officials and members of other organizations regulated by the Province as well.

280. The British Columbia Council of Human Rights, an independent quasi-judicial tribunal, administers the *Human Rights Act*. Any person may file a complaint alleging discrimination contrary to the Act. Human rights officers of the Council investigate complaints . If there is a reasonable basis in the evidence for proceeding to the next stage, the complaint is referred to a hearing before a Council member. If a Council member determines at a hearing that discrimination has occurred, he or she issues an order under the Act, which allows for several remedies: a) a cease and desist order; b) making available the right, opportunity or privilege that was denied; c) compensation for any lost wages or salaries, or expenses incurred; and d) damages for injury to feelings and self-respect.

281. The *Human Rights Act* also prohibits retaliation against people involved in a complaint. Under the Act, no person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains or is named in a complaint, gives evidence or otherwise assists in respect of the initiation or prosecution of a complaint or other proceeding under the Act. Complaints of retaliation may be submitted to the Council in the same manner as other complaints of discrimination.

282. From 1991 to date, the British Columbia Council of Human Rights has offered educational programs to children and adults, schools and businesses.

Female Genital Mutilation

283. In Canada, the existing provisions of the *Criminal Code* for Assault Causing Bodily Harm provide the authority to address this practice. In British Columbia, the practice of female genital mutilation is covered under the *Child, Family and Community Services Act* as a circumstance under which a child needs protection. Section 13 of the Act outlines examples of harm, including physical harm, deprivation of necessary health care, and serious impairment of a child's development by a treatable condition. Section 14 of the Act indicates that these situations must be reported to the Director.

APPENDIX BC-1

Additional Material Relevant to Article 2:
Provincial Policing Standards

Provincial Policing Standards, the first of their kind in Canada, were developed as a joint project of the Police Commission and the British Columbia Association of Chiefs of Police by police officers seconded to the Commission. The Standards identify 440 specific areas in which a police department should have policies, and inspections by the Commission are based on those Standards. The Standards aim to identify minimum acceptable standards for police that are uniformly applicable in all municipal departments.

The Standards addressing areas relevant to the UN Convention include the following:

(a) Use of Force

- discharge of warning shots
- carrying and storage of weapons on and off duty
- use and control of weapons and ammunition
- inspection of firearms
- training and qualification of officers authorized to use weapons or firearms
- requirement that a written report be submitted when an officer or other employee:
  - takes an action that results in (or is alleged to have resulted in) the injury or death of another person
  - applies force through the use of a weapon
  - discharges a firearm, other than in training, and/or
  - applies force by any means, other than routine handcuffing or low level restraint procedures for reviewing incidents in which an officer applies force by means of a weapon or firearm, lateral neck restraint, or the application of force, by any means, other than routine handcuffing or low levels of restraint and compliance
- training and qualification for the use of the lateral neck restraint technique

(b) Internal Investigations

- establishment of administrative policies for the purposes of creating a process to ensure the integrity of departmental impartiality, fairness and objectivity when investigating members of the department
- establishment of guidelines to ensure that complaints are categorized appropriately

(c) Prisoner Transportation

- special care methods required for the transportation of mentally disturbed, handicapped, sick or injured prisoners

- the use of restraint methods during transportation
- transportation of prisoners of the opposite sex

(d) Detention Facilities

- restricted access to the facility by all persons, including police
- minimum physical plant conditions, such as proper lighting, air circulation, access to toilet, bathing, sleeping and drinking facilities
- confidential access to legal counsel and telephone
- constant monitoring of prisoners by staff
- securing of firearms in the holding facility
- security alarm systems linked to designated control points
- booking-in procedures, including the recording of apparent physical or psychological conditions present at the time of booking
- use of video surveillance and recording equipment for all prisoner booking areas
- recording of all significant occurrences in the detention facility
- provision of medical care services in facilities
- procedures to ensure lawful and timely release from custody
- separate facilities for young offenders and females
- special handling and observation of prisoners who are under the influence of alcohol or drugs or of those who are violent or self-destructive

(e) The Use of Dogs

- procedures to ensure that the deployment of dogs is appropriate

Of particular relevance to the UN Convention is the fact that training at the Police Academy communicates and strengthens the message to police members that the municipal police service in British Columbia is committed to responding to community needs and criminal matters in an equitable, responsible and humanitarian manner. Specifically, this message is reinforced through the Academy's emphasis during training on the relevance and significance of the *Canadian Charter of Rights and Freedoms*[3], provincial-territorial human rights codes, policies and practices for dealing with police conduct and public complaint processes. In all areas of recruit training, academy staff and curriculum reinforce the officer's duty to respect fundamental rights and freedoms and provide important, positive affirmation and reinforcement of the basic tenet that law enforcement activities and the administration of justice must operate within the confines and limits of fundamental rights and freedoms.

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[3] Legal updates are also published and distributed to police personnel by the Police Academy of the Justice Institute of British Columbia several times a year.

Code of Ethics

Increasingly, B.C. municipal police departments are recognizing that recruit officers should be taught ethical decision making at the Police Academy and that this training should be reinforced throughout the officer's career. A major goal of police ethics is the development of moral sensitivity, nurturing of moral breadth and depth, fostering the acceptance of certain "culturally universal" moral understandings, a widening of moral horizons, and the stimulating of greater sensitivity to the rich fabric, many layers and finer nuances of human interaction. The development of a positive code of ethics is viewed as an important tool to guide police officers and lessen the potential for abuse or misuse of their discretionary powers. In view of the potential significance of ethics in policing, the Police Academy hosted a very successful conference on "Police Ethics: A Key to Professionalism" in June 1995. The event provided an opportunity for members of the policing community, academics and members of civilian oversight organizations to meet and examine issues related to police professionalism and ethics.

The conference generated considerable interest in pursuing the development of guidelines for a code of ethics for the province of British Columbia. One of the outcomes of the conference was the establishment of a Joint Ethics Review Committee at the Vancouver Police Department. The mandate of this committee is to develop and eventually implement a code of ethics for the Vancouver Police Department, with adoption by other municipal departments anticipated in future.

The Police Academy is also in the process of developing a program for the enhancement of police ethics in its curriculum. The program focuses not only on the infusion of values, but also on their maintenance so as to foster consistency and achievement of the high standards of integrity commonly displayed by professional police officers. Police officers must be cognizant of standards for the treatment of the public. These standards include the principles that all persons have the right to equal respect and concern, that ethical judgments must be impartial with respect to the interests of individuals and that rules prescribing differential treatment of persons are permissible only when justified by relevant differences in those persons (e.g., differences that must be taken into account if the requirement of equal respect is to be satisfied).

Additional Material Relevant to Article 10:
Police Use of Force Training

In British Columbia, three areas dictate the grounds by which police officers may use or, in some cases, indicate the intent to use, lethal force (i.e., drawing and presenting a firearm) or use a firearm for another purpose. These areas are the *Criminal Code*, the *B.C. Police Act* and individual departmental policy.

Section 25 of the *Criminal Code* authorizes the use of lethal force by a peace officer within specific parameters. Furthermore, provincial regulations outlined in the *B.C. Police Act* and *Police Firearm Regulations* include specific guidelines for the use of police firearms. The *Police Act* requires that, before discharging a firearm, an officer ensure that lesser levels of force are not

readily available. In addition to this legislation, each department has a specific policy regarding lethal force and the use and discharge of police firearms and other weapons. The Police Commission has also developed general Provincial Standards on the use of force for municipal police departments. A law enforcement officer acting outside the above legislation may not be criminally or civilly protected in using the firearm. Moreover, municipal police officers are accountable for their use of force under the *Discipline Code in the Police (Discipline) Regulation*, which makes it a disciplinary default for an officer to use firearms improperly or use any unnecessary violence against a person. All persons authorized to carry firearms must be fully aware of the rules governing their use and considerable time is spent outlining use of force issues during recruit training at the Police Academy. Training officers in the use of force during the late 1970s was relatively basic and included pistol shooting, boxing and physical training. Today, training emphasizes conceptual models of force options, theories about appropriate ways to use force options and the importance of reasoned discretion in the selection of force options. Police learn that they have less-than-lethal alternatives available in situations calling for force. Training models contain options such as the following:

- officer presence;
- dialogue and communication;
- empty-hand control tactics;
- intermediate weapons; and
- firearms and deadly force.

Officers are also trained in the following skills regarding use of force:

- communication;
- conflict resolution and intervention;
- mediation;
- force models and philosophy;
- officer survival and awareness; and
- series incident methodologies.

Intervention, defusion and mediation skills are recognized as essential in the training of municipal police officers. Officers are taught to recognize the level of violence and tailor a response that ensures effective control of the incident ensuring minimum injury to the offender, public and other officers.

In addition to the up-to-date use of force training provided to Police Academy officers, many municipal police departments offer in-service training. Moreover, municipal police officers are required (by varying degrees of legislation and departmental policy) to qualify or certify annually in several areas involving use of force. These include use of force continuum, lateral neck restraint, oleocapsicum spray, baton and firearms.

The B.C. Police Commission is currently considering a request for formal implementation of a Provincial Standard for use of force training to ensure consistency in training among the twelve municipal police departments.

Additional Material Relevant to Article 13:
Scope of Complaint Procedures Concerning Police

The *Police Act* complaint procedures cover both municipal and provincial constables. This includes approximately 400 special provincial constables employed by corporations, private agencies, federal and provincial corporations and government departments. For example, special provincial constables are employed by British Columbia Transit to perform security work and by the Stal'atl'imx Nation Tribal Police to conduct investigations in prescribed areas under the general supervision of the RCMP.

The powers of these special provincial constables vary according to the terms of their appointments and the job responsibilities they have been hired by their employers to perform, but they are never as extensive as the powers accorded to municipal police forces. Few categories of special provincial constable carry firearms.

The citizen complaint procedures under the Act provide a different process for special provincial constables than for other municipal officers. The disciplinary authority is the Deputy Commissioner of the RCMP, rather than the employer. Because the provisions of the Act do not consider all aspects of complaints and discipline, special protocols have been signed with several employers to provide further guidance.

Current Citizen Complaint Procedures

An individual may file a written complaint regarding the conduct of an officer with the Complaint Commissioner or police department. The person who receives a complaint must provide a complainant with information regarding the complaint process, complainants' rights and return a copy of the complaint. If a police department receives a complaint, the Complaint Commissioner's office must receive a copy. The complainant receives regular status reports. If the police resolve a matter informally, the results of the resolution must be forwarded in writing to the Complaint Commissioner and the complainant.

If a complaint is not resolved informally, the Chief Constable is responsible for ensuring that it is investigated. Under normal circumstances, the department concerned will investigate complaints. However, if the Chief is unable to appoint an investigator unconnected with the allegation (or for any other reason), the Chief may order that the investigation be undertaken by a member of another police force.

Only when a complaint is deemed "frivolous and vexatious," in bad faith, trivial, insufficiently connected to the complainant or over 6 months old does the Chief Constable have the discretion to refuse to investigate. The Chief Constable's refusal to investigate may be appealed to a panel

consisting of two police board members. Once an investigation has been completed, the Chief Constable decides whether the misconduct complaint has been substantiated and, if so, what sanction is appropriate. Complainants have an automatic right to appeal this decision to a public inquiry composed of civilian police board members. If granted leave to appeal, public inquiry decisions may be appealed to the provincial Police Commission. Complaints against Chief Constables and Deputy Chief Constables are forwarded to the chairperson of the police board, who is empowered to appoint an investigator independent of the Chief or Deputy Chief.

The burden of proof at public inquiries and Commission hearings of complaints is proof beyond a reasonable doubt. Officers complained against are compellable witnesses at a public inquiry.

Chief Constables, police boards and the Police Commission are restricted to the sanctions provided for in the *Discipline Code* (see Article 2).

Complaint Statistics

The following represents the numbers of complaints filed against municipal officers and special provincial constables under the Act between 1990 and 1995, as well as allegations of excessive force.

Year	Total	Special Prov. Cst	Excessive Force
1990	194	not available	87
1991	221	not available	97
1992	182	6	61
1993	199	10	69
1994	184	2	74
1995	214	6	65

Reform of the Citizen Complaint Procedures

(a) Policing in British Columbia Commission of Inquiry

In September 1994, the Commission of Inquiry tendered its "Closing the Gap" report. Among its 317 recommendations regarding policing in general were a number of recommendations for changes to the current complaint process aimed at enhancing police accountability mechanisms. The reforms proposed in this area included:

- more stringent oversight by the Complaint Commissioner to ensure that all citizens' concerns are addressed properly;
- increased independence and accountability of the Complaint Commissioner, who would report to the legislature;
- better informal resolution mechanisms based on the goals of community policing;
- greater access to the Complaint Commissioner for those who are reluctant to complain to the police;

- more detailed and sensitive recording of complaints;
- better mechanisms to address complaints concerning the quality of service and policies;
- more detailed reporting by police to the complainant and to the Complaint Commissioner;
- better identification of systemic problems;
- mechanisms to ensure that investigations are conducted by persons who are unbiased, in appearance and reality;
- increased opportunity for the Complaint Commissioner to investigate public trust matters not arising from a citizen complaint;
- more stringent review by the Complaint Commissioner of police refusal to investigate;
- stronger mechanisms for ensuring what Crown Counsel may consider criminal behaviour; and
- more impartial adjudication of police discipline arising from citizen complaints, in a public forum before an independent tribunal.

Complaints involving Corrections Officers

In May 1994, the Investigation, Inspection and Standards Office was separated from Corrections Branch and the mandate and reporting relationship revised. The II&SO is independent of both Corrections Branch and Court Services Branch, and the Director reports to the Minister. The II&SO mandate includes performing independent investigations at the request of the Minister and investigating complaints or allegations of the unnecessary use of force.

Under section 45 of the *Correction Act,* the office shall investigate written complaints from adult inmates or youths who have been held in a youth custody centre, or from a parent or guardian of a youth. The office advises the complainant and Branch management of investigation results.

The II&SO generally maintains statistics on the number of complaints received and investigations conducted. During fiscal years 1990-1991 to 1995-1996, the office and its predecessor organization received 1,542 complaints. Of these, 25 related to abuse of process or allegations of unnecessary use of force; four were substantiated and none of these occurred in the last three years. Individuals unsatisfied with investigation results may also have their complaints investigated by the Office of the Ombudsman for British Columbia.

Documentation

The following documents were submitted to the United Nations with the present report:

Ombudsman's Office Documents

Guiding Principles
"Listening"
"Building Respect"

Jericho Hill Report
"Fair Schools"

Provincial Legislation

Child, Family and Community Service Act
BC Human Rights Act and *Human Rights Amendment Act, 1995*
Police Act
- *Discipline Code and Regulations*
- *Police Firearm Regulations*

Inquiry Act

PART IV: MEASURES ADOPTED BY THE GOVERNMENTS OF THE TERRITORIES*

NORTHWEST TERRITORIES

Article 2

284. The law and policy of the Northwest Territories remains as outlined in the First and Second Reports.

Article 10

Physician Training

285. The Northwest Territories has neither an independent training program nor a fully independent registration procedure for physicians. The right to practise medicine in the Territories, granted under the *Medical Profession Act*, RSNWT 1988, rests on proof of training and registration in other jurisdictions. Physician training on the effects of torture might more properly be addressed through these jurisdictions.

Article 11

286. The *Corrections Act*, RSNWT 1988, is unchanged since the Second Report.

* Geographical order, east to west

287. There has been one amendment to the Corrections Service operations manual. It was reported in the Second Report that drugs may be used to control an inmate only with the authorization of the Medical Officer and the Corrections Psychologist. However, because not all Correctional Centres have a Corrections Psychologist, it is not always possible to receive the authorization of a psychologist. In these cases it is now only required that there be consultation with and approval from the Medical Officer.

Article 16

288. The *Mental Health Act*, RSNWT 1988, which provides the legal framework for involuntary committal, was amended in 1994 to provide greater protection for the civil rights of the mentally disabled. New safeguards include the requirement to provide information in the aboriginal languages, to provide interpreter services, to consult with elders, and to provide court review if patients are held involuntarily for a period exceeding two months. In other respects the Act remains as stated in the Second Report.

YUKON

Article 2: Legislative, Administrative, Judicial or Other Measures

289. The Yukon's *Torture Prohibition Act*, S.Y. 1988, c. 26, as previously reported, provides the primary means of civil redress for victims of torture. No amendments have been made to this Act and no cases were brought under this Act for the period of this report.

290. The *Coroners Act*, S.Y. 1986, c. 35, was amended (by *An Act to Amend the Coroners Act*, S.Y., 1994, c. 6) in 1994 to provide for an investigation and subsequent inquiry into a death where there is reason to believe the death resulted from violence, misadventure or unfair means or as a result of negligence, misconduct or malpractice.

291. The *Ombudsman Act*, S.Y. 1995, c. 17, has been enacted to allow an independent Ombudsman to investigate how Yukon government departments, agencies, commissions and boards do business, including their actions, decisions, practices and procedures, at no cost to the complainant.

Article 10: Training of Public Personnel

292. RCMP recruits receive training on the use of force and on relevant provisions of the *Canadian Charter of Rights and Freedoms* and the *Criminal Code*.

293. Information from the Canadian Centre for Victims of Torture regarding the training program for medical personnel has been requested in order to provide training in compliance

with the Convention. No training with respect to the Convention was provided for medical personnel within the Yukon during the period of this report.

Articles, 12, 13 and 14: Victim Complaints and Investigation

294. The *Ombudsman Act*, S.Y. 1995, c. 17, has been enacted to ensure prompt and independent investigation into complaints against public officials. As of the date of this report, the Ombudsman had not received any complaints.

295. There were 58 reported complaints to the Public Complaints Commission against RCMP in the Yukon, 15 involving assault or excessive force. Of those, eight are under investigation, four were determined to be unfounded and three are awaiting the opinion of the Crown for sentencing of the complainant before an investigation will be commenced. No members of the RCMP in the Yukon were found to be guilty of a complaint during the period of this report.

296. There were no complaints made by correctional inmates with regard to corrections officers charged with the custody of offenders in the Yukon under the *Corrections Act*, S.Y. 1986, c. 26, during the period covered by this report.

297. There were no complaints pursuant to the *Torture Prohibition Act*, S.Y. 1988, c. 26, during the period covered by this report.